

# Memorandum



**Date:** July 7, 2005

**To:** Honorable Chairman Joe A. Martinez and Members,  
Board of County Commissioners

Agenda Item No. 10(B)(1)(A)

**From:** George M. Briggs,  
County Manager

**Subject:** Contract Award Recommendation for the Construction of the South Miami-Dade Cultural Center.

## **RECOMMENDATION**

It is recommended that the Board of County Commissioners approve the attached resolution waiving competitive bidding procedures under Florida Statutes Section 255.20(1)(c), and waiving Sections 2-8.1, 2-8.3 and 2-8.4 of the Code of Miami-Dade County, Florida, related to bidding and bid protest procedures, and authorizing the lump sum contract award for the construction of the South Miami-Dade Cultural Center to The Tower Group, Inc. The construction of this Cultural Center is of paramount importance to providing educational, cultural, and recreational services to the South Miami-Dade community and the entire County.

## **BACKGROUND**

### *Project Description*

The South Miami-Dade Cultural Center is a key component of the Moss Plan and is designed to be a catalyst for the development of the entire South Miami-Dade area. The buildings will be located on 6.39 acres of land at 10900 S.W. 211 Street, adjacent to the South Miami-Dade Government Center. The Center is comprised of two buildings:

- Theater Building – Phase I (Project Number 9722A) – The 71,500 square foot Theater Building will house an over 70-foot high lobby space, a 966-seat theater on three levels, an orchestra pit, stage area with fly loft space, a multi-purpose room, ample restroom amenities, dressing rooms, administrative offices, and dramatic public artwork by Miami artist Robert Chambers. To the south of the buildings, a gently graded lawn slopes towards the Black Creek Canal where outdoor concerts, festivals, and art fairs will be hosted; and
- Activities Building – Phase II (Project Number 9722B) - The 7,500 square foot Activities Building provides rehearsal, small-scale performance, and classroom spaces across a promenade that joins the two buildings.

The Center's design is a collaboration of local, world-renowned architectural firm Arquitectonica International Inc., along with theater planning consultants Fisher Dachs Associates, and sound, communications, and acoustical designers Artec Consultants, Inc., resulting in a state of the art facility, fulfilling a long-standing promise to the South Miami-Dade community.

### *Bidding Process and Contract Negotiation*

The solicitation for construction bids was advertised in October 2004 and included Community Small Business Enterprise goals of 19% for Phase I (Theater Building) and 20% for Phase II (Activities Building) and an overall project goal of 10% for the Community Workforce Program. The contract time is estimated at twenty months with completion projected for the third quarter of 2007.



Respondents were required to provide fixed prices inclusive of all labor, materials, equipment and services for the Contract work, for the following:

- Lump Sum Base Bid: covering Phase I (Theater Building); and
- Additive Alternates: providing separate prices for
  - Phase II (Activity Building); and
  - Orchestra Shell

At the time of the issuance of the bid package in the fall of 2004, secured project revenues for construction (\$29,286,189) were available to cover only the construction cost of Phase I (Theater Building). Prices were requested for the Additive Alternates to ensure that there were committed bids for these key project components, if additional revenues were able to be secured.

Three bids were received on February 2, 2005. After review by the Department of Business Development, two of the bids were determined to be non-responsive. The bid from The Tower Group, Inc. was determined to be responsive and exceeded the CSBE goals for each of the project's phases. It included: \$34,569,000 for the Base Bid – Phase I (Theater Building); \$3,669,000 for Additive Alternate – Phase II (Activity Building); and \$627,367 for Additive Alternate – Orchestra Shell.

While the project was out to bid, the Building Better Communities (BBC) bond program was approved and provided the South Miami-Dade Cultural Center with an additional \$10 million of revenues. These revenues complemented the resources already secured for the project from CDT-backed bond proceeds, interest earnings, Safe Neighborhood Parks bond funds and a State of Florida Cultural Facilities grant. With the additional BBC bond program funds, the target price available for constructing both Phase I (Theater Building) and Phase II (Activity Building) was \$36,238,000 (versus the \$38,238,000 in The Tower Group's bid for these two phases). This target price takes into account the need for sufficient overall revenues to cover the project's other capital expenses, including the contingency, Inspector General, IPSIG fees, public art allowance, consultant fees, Owner development costs and FF&E costs.

The Department of Cultural Affairs initiated negotiations with the responsive bidder in a cooperative effort to identify cost savings strategies that enable us to build both Phase I (Theater Building) and Phase II (Activity Building) without compromising the quality of the project. Through a public process, the goal of identifying \$2 million in proposed cost savings items was reached after a careful review to ensure that the integrity and technical merits of the project are not jeopardized. The entire design team, including architects, structural engineers, mechanical, electrical, plumbing, and life safety engineers, acoustical and sound and communication consultants, and theatrical systems consultants, have participated in the review in order to maintain the high level of performance requirements that this facility demands. The result is a project that achieves all of the aesthetic and state of the art technical qualities that the community has requested and is expecting to be provided in this facility.

A complete list of the cost savings items is included herein as Attachment A, and the revised Construction Documents (drawings and specifications) incorporating these cost savings items are on file with the Clerk of the Board. The cost savings items totaling \$2,000,000 reduce the combined bid for the construction cost of both buildings from \$38,238,000 to \$36,238,000.



A detailed breakdown of the capital project revenues and expenses is included as Attachment B. Please note that the award of the contract authorizes the following budget items:

The Tower Group Construction Cost	\$36,238,000
Contingency (5%)	\$ 1,811,900
Independent Private Sector Inspector General (.75% of construction)	\$ 271,785
Office of the Inspector General (.25% of construction cost)	\$ 90,595
TOTAL MAXIMUM CONTRACT AMOUNT	\$38,412,280

### *Contract Terms*

The contract form is included as Attachment C. It incorporates, by reference, the complete set of Plans, Technical Specifications and other Contract Documents as amended to incorporate the cost savings items described in Attachment A. The project's architect, Arquitectonica, International Inc. developed the Plans that were subject to a number of thorough reviews including: an "outside" value engineering evaluation required during the design period; ongoing analysis by the County's project architects in the Department of Cultural Affairs; a year-long review by the Miami-Dade Building Department as part of the "dry run" process to submit the project for a building permit (including Building Department comments that were incorporated into the documents); and the cost savings exercise during the 3-month bid negotiation period that identified efficiencies necessary to accomplish the \$2 million price reduction. The Technical Specifications and Contract Documents contain the standard provisions and strict requirements necessary for County-managed construction projects.

Attachment D is a copy of Section 00700 – General Conditions of the Technical Specifications, containing the principal terms of the contract. The following items highlight key business points:

- The Contract requires that for the single lump sum price, the Contractor will be responsible for all labor, materials, equipment and services necessary for the Contract work (Attachment C, 2<sup>nd</sup> paragraph);
- Before a notice to proceed for the work can be issued and as a prerequisite for any payment to be made, the Contract requires that the Contractor must submit an overall construction schedule and the finalized schedule of values for the review and approval of the Architect and the County (Attachment D, Article 10.2, pages 48-49);
- The Contract contains rigorous standards for the monthly review of and Contractor's conformance to the construction schedule, providing the Architect and the County with the authority to allocate responsibility if the project is behind schedule (Attachment D, Article 4.13, pages 19-20);
- To maintain the timetable for the project's completion, the Contract includes liquidated damages to be assessed by the County at the rate of \$2,893 per day for each day the contract time is exceeded for a non-excusable delay, up to 90 days (Attachment D, Article 7.6, page 41, with the rate of \$2,893 per day stipulated by the Tower Group as required on their bid form);
- In the event that there be any apparent errors or omissions in the Plans and Technical Specifications, the Contract requires that the Contractor must abide by the Architect's interpretation of the documents and further requires the Contractor to be held to have included in the bid the most expensive material and/or method of construction (Attachment D, Article 2.5, pages 7-8);
- To avoid Contractor-initiated change orders, the Contract does not permit substitution requests during construction, except for those initiated by the County (Attachment D, Article 7.1, pages 32-33);
- The Contract contains strict requirements for the performance of the work and provisions to ensure the review of and conformance with the quality standards for materials and assembly, and to enforce the Contractor's responsibilities for the remedy of deficiencies, as necessary (Attachment D, Articles 9.1, 9.2 and 9.3, pages 45-47);



- The project's theater planning consultants Fisher Dachs Associates, and sound, communications, and acoustical designers Artec Consultants, Inc. remain under contract to the County through the duration of the construction and commissioning phases to conduct regular site inspections and to advise the County regarding the Contractor's implementation of design features critical to the building's performance;
- The County will provide enhanced on-site construction administration services to ensure an efficient and timely decision-making process, including a full-time structural engineer on site for a twelve month period (during the critical concrete and steel phases of the project);
- The project includes a 5% construction contingency, totaling \$1,811,900 that is controlled by the County and available at the County's discretion, to address such items as Owner-initiated changes and unforeseeable work, as determined by the County; and
- The Department of Cultural Affairs is currently pursuing an approval from the State of Florida Department of Revenue to implement a direct purchase plan for the project, which would provide additional savings of the sales tax fees on items purchased by the County. Any savings realized through the implementation of this plan will be added to the project contingency pursuant to the provisions included in the Contract Documents.

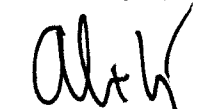
#### *Benefits of Contract Award*

Based on the events and terms outlined in this memorandum, awarding a construction contract to The Tower Group, Inc. at this time is considered to be in the best interest of the County and is recommended for the following key reasons:

- Given the current rapid escalation of construction costs, delays in awarding a construction contract are certain to result in a substantially reduced project scope for the same budget (substantial reductions which have the potential to incur additional architectural and engineering fees for amendments to the contract documents);
- The Tower Group, Inc. has demonstrated a strong desire to be a partner with Miami-Dade County in building this landmark project, has consistently demonstrated a high level of professionalism in understanding the design intent of the project and in proposing efficient cost savings ideas, and is prepared to begin the work immediately;
- Delays in the start of construction will jeopardize the use of a State of Florida Cultural Facilities grant for \$500,000 expiring April 1, 2006 (the grant is provided on a reimbursement basis and evidence of grant funds being spent must be submitted by the grant expenditure deadline); and
- Awarding a construction contract and breaking ground on this landmark facility will also achieve the County's goal of expeditiously implementing the Building Better Communities Bond Program. The much-anticipated South Miami-Dade Cultural Center can be started well within a year of Miami-Dade County voter approval of the BBC Program.

The award of this construction contract culminates more than a decade of community planning, followed by design and engineering work, to create the first major cultural facility in the South Miami-Dade area. This new Cultural Center will serve the growing population in its surrounding neighborhoods and serve as a hub for the development of the community's cultural, civic, educational, and social life.

Attachments



Alex Muñoz  
Assistant County Manager





# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** July 7, 2005

**FROM:** Robert A. Ginsburg  
County Attorney

**SUBJECT:** Agenda Item No. 10(B)(1)(A)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☒ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review



Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 10(B)(1)(A)

07-07-05

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING THE WAIVER OF COMPETITIVE BIDS AND BID PROTEST PROCEDURES, AND AUTHORIZING THE AWARD OF CONTRACT WITH THE TOWER GROUP, INC. FOR THE CONSTRUCTION OF THE SOUTH MIAMI-DADE CULTURAL CENTER**

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, because of the reasons detailed in the accompanying memorandum, the County seeks to build a new cultural center in South Miami-Dade County in fulfillment of the overwhelming need for this facility; and

WHEREAS, after notice and publication in accordance with all applicable ordinances and resolutions, the County received one single responsive bid for the construction of the South Miami-Dade Cultural Center which was in excess of the project's budget; and

WHEREAS, the single responsive bidder, The Tower Group, Inc. entered into negotiations with the Department of Cultural Affairs to reduce the overall project cost resulting in thoughtful and careful modifications that do impact the quality and functionality of the project; and

WHEREAS, it is in the County's best interest to waive competitive bidding and bid protest procedures and award the construction contract,



NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Board approves the waiver of competitive bids and bid protest procedures, and authorizes the County Manager to award a contract with The Tower Group, Inc. for the construction of the South Miami-Dade Cultural Center, and that:

Section 1. The recital clauses enumerated above are true and correct and are incorporated herein by reference.

Section 2. This Board waives bid protest and formal competitive bidding procedures and authorizes the County Manager to execute the contracts necessary for the construction of the new South Miami-Dade Cultural Center, following review and approval of the County Attorney's Office; this Board, finding it to be in the best interest of the County to waive formal bid procedures and the provisions of Administrative Orders 3-2 and 3-4 in connection with such selection, formal bidding being waived in connection herewith pursuant to Section 4.03(D) of the Home Rule Charter, and waiving bid protest procedures of Code Sections 2-8.3 and 2-8.4 in connection therewith pursuant to a vote of two-thirds (2/3) of the Board members present and upon written recommendation to the County Manager.



The foregoing resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Dennis C. Moss, Vice-Chairman	
Bruno A. Barreiro	Dr. Barbara Carey-Shuler
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorrian D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of July, 2005. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as  
to form and legal sufficiency. 5/18/05

Deborah B. Mastin

By: \_\_\_\_\_  
Deputy Clerk



**Attachment A**  
**SOUTH MIAMI-DADE CULTURAL CENTER**  
**CONSTRUCTION CONTRACT AWARD**  
**COST SAVINGS ITEMS**

Item	Description	Revised Contract Documents	Savings
<b>Division 1</b>			
General Conditions and Contractor Fee	The Tower Group agreed to a cost reduction in the general conditions line item and the Contractor's Fee.	n/a	\$121,185.00
<b>Division 2</b>			
<b>Site Concrete</b>			
Decorative Concrete	Scoring pattern in the concrete walkways outside the building and inside, on the lobby floor, shall be simplified.	ARQ revised the Contract drawings A1A-000, A1A-002, A1A-101a, A1A-101b, A10A-101, A1B-101, A7A-02, A9A-10, B1A-001, B1A-002, C-3, C-3A, C-5, C-5A, L1-01, and L1-02; no specification changes required.	\$44,000.00
<b>Landscaping</b>			
Weed Control Fabric	The weed control fabric was unnecessary and shall be eliminated.	ARQ revised Contract drawings L1.01 and L1.02; no specification changes required.	\$1,115.00
<b>Pavers</b>			
Grass Pavers	Grass pavers at the loading dock area shall be replaced with asphalt.	ARQ revised the Contract drawings A1A-000, A1A-002, B1A-002, C-3, C-3A, C-5, C-5A, L1-01 and L1-02, and specification section 02768 Decorative Cement Concrete.	\$2,000.00
<b>Bahia Sod</b>			
Elimination of some Bahia Sod (footprint of activity bldg. And Phase II parking area)	With Phase I and Phase II being concurrent there will be no need to install the Bahia sod in the footprint of the activity building and the parking area for Phase II.	ARQ revised Contract drawing L1.01, no specification changes required.	\$1,760.00
<b>Division 3</b>			
<b>Concrete</b>			
Purchase and Placement; concrete reinforcing; rebar placement	The Tower Group agreed to self perform the concrete and masonry superstructure in lieu of subcontracting this work. By self performing the aforementioned work, The Tower Group Inc. agrees to a savings of \$250,000 to the owner.	n/a	\$250,000.00
Basement Walls	1'-0" reduction in depth of all basement walls, per building department review.	ARQ revised Contract Drawings A1A-100, A1B-107, A4A-103, A4A-106, A4A-107, A4A-108, A4A-109, A4A-110, A4A-111, A4A-112, A4A-113, A4A-114, A4B-101, A4C-114, A6A-02, S2-00B1, S3-40, S3-60 and S4-13.	\$12,000.00
On-site representation during Concrete & Steel	The Tower Group offered a savings of \$100,000 for a full-time structural engineer on site for a 12 month period (during the concrete and steel phases of the project.)	n/a	\$100,000.00



**Attachment A**  
**SOUTH MIAMI-DADE CULTURAL CENTER**  
**CONSTRUCTION CONTRACT AWARD**  
**COST SAVINGS ITEMS**

Item	Description	Revised Contract Documents	Savings
Division 5			
Steel			
Structural Steel tubes	on 5/11 The Tower Group submitted proposal alternate manufacture method of the steel tube columns at the curtain wall.	The Tower Group (Contractor) to provide revisions through shop drawings.	\$120,000.00
Structural Steel	on 5/11 The Tower Group proposed substituting PG-1 and PG-2's with a 72" girder on S2.06A	The Contractor understands the design intent based on discussions during public meetings held on 4/19/05 and 5/17/05, and agrees to achieving savings and time efficiencies in the fabrication of steel members as proposed. Furthermore, in these meetings the Tower Group expressed its intent to work with the Owner and the A/E in a collaborative effort to construct the project. Since it is not feasible to provide shop drawings before awarding the construction contract, the Contractor shall provide shop drawings of sections of the building in a timely manner for the A/E to review and approve within a schedule to be determined by the Contractor, A/E, and Owner. In the event that proposed revisions are not acceptable to the A/E and Owner, the Contractor shall provide the steel members currently shown in the bid documents at no additional cost to the Owner. The Contractor shall waive all claims for additional costs related to the proposed substitution of steel members, and any changes necessary in the coordination of other trades due to the proposed changes.	\$55,000.00
Steel auditorium roof framing	on 5/11 The Tower Group proposed redesigning the structural steel at the roof by actual point loading of the catwalk in lieu of using a uniform design.		\$25,000.00
Steel Beams	on 5/11 The Tower Group proposed substituting the following wide flange beams with joists: W12x45 at the stage roof framing (sheet S2.06B), W12x65 at the auditorium roof framing (sheet S2.06A), W16x40 at the sub-roof acoustical slab (sheet S2.05A), W24x55 at the 3rd level framing (sheet S2.03B).		\$33,000.00
Stainless Steel Stairs & Handrails	All stainless steel stairs and handrails shall be replaced with aluminum.	ARQ revised the Contract drawings A1B-105B, A4A-108, A4A-110, A4C-112, A5A-101, A5A-103, A6A-01, A6A-02, A6A-05, A7A-01, A7B-02, A7B-03, A7B-04, A7B-05, A7B-06, A7B-08 and spec. section 05720-Ornamental handrails and railings.	\$170,000.00
Back of the house Stairs & Handrails	All woven wire mesh railings shall be replaced with in-line horizontal railings, per the Architects sketch #059.	ARQ revised the Contract drawings A4A-103, A4A-109, A4A-112, A4A-113, A4B-100, A4C-114, A6A-01, A6A-03, A6A-04, A6A-06, A6A-08, and Sketch 059 and specification section 05720 - Ornamental Handrails and Railings.	\$15,000.00



**Attachment A**  
**SOUTH MIAMI-DADE CULTURAL CENTER**  
**CONSTRUCTION CONTRACT AWARD**  
**COST SAVINGS ITEMS**


Item	Description	Revised Contract Documents	Savings
<b>Division 6</b>			
Cabinetry			
Wood panels with veneers	The thickness of the mdf board at the wood panels in the auditorium to be reduced from 1/2" to 3/8".	ARQ revised Contract Drawings A5A-109, A5A-110 and A5A-111, A5A-112, A8A-00 and A9A-00; and specification section 06420-paneling.	\$50,000.00
Baseboards	The maple baseboards shall be replaced with poplar.	ARQ revised A8A-00 and A9A-00; no specification changes required.	\$3,000.00
Stainless steel base	The stainless steel base at the lobby walls shall be replaced with wood base.	ARQ revised the Contract Drawings A5A-112, A5A-102, and A4B-102 no specification changes required.	\$37,120.00
<b>Division 7</b>			
Roofing			
SBS Modified roofing deck insulation	The iso board shall be replaced with a lightweight concrete board (Mearlcrete).	ARQ revised spec section 07210 - Building insulation, no drawing changes required.	\$15,000.00
Firestopping			
Fireproofing	Fireproofing at high roof on S2.06A from 59'-6" to 90' a.f.f. which is not required by code to be eliminated.	The Tower Group agrees to comply with all applicable codes.	\$81,000.00
<b>Division 8</b>			
Doors			
Wood doors	The wood door ratings are being revised to 20 minutes, meeting, but not exceeding Code as specified.	ARQ revised the Contract drawings A8A-10 and A8A-11. No specification changes required.	\$58,000.00
Glass			
Curtain Wall Glazing	The horizontal and vertical breaks in the glazing shall be reversed, and the glazing height shall be lowered to 10' at ticket booth area to eliminate the need for glass curtainwall.	ARQ revised Contract drawing A8W-01, no specification changes required.	\$278,000.00
<b>Division 9</b>			
Drywall - eliminate cross furring	The cross furring at the drywall ceiling assemblies shall be eliminated, excluding at the waved ceiling assembly in auditorium.	ARQ revised the Contract drawings A4A-100, A4A-101, A4A-102, A4A-107, A4A-108, A4A-109, A4A-110, A4A-111, A4A-112, A4A-113, A4A-114, A4A-115, A4A-116, A4C-100, A4C-101, A4C-102, A4C-105, A4C-108, A4C-112, A4C-114 and A4C-115.	\$65,000.00
Wood flooring	An alternate wood flooring system shall be used.	ARQ revised the Contract drawings A1A-101B, A7A-04, A7A-08, A7B-04, A7B-05, A8A-00 and A9A-00 and specification section 09642-Wood Flooring.	\$30,820.00
Venetian Stucco	The venetian stucco finish shall be replaced with a standard paint finish, using the same hexagonal pattern.	ARQ revised the Contract drawing A5A-101, A5A-102, A8A-00, A8A-01 A9A-00 and to revise specification section 09215-Gypsum Veneer Plaster.	\$35,000.00



**Attachment A**  
**SOUTH MIAMI-DADE CULTURAL CENTER**  
**CONSTRUCTION CONTRACT AWARD**  
**COST SAVINGS ITEMS**

Item	Description	Revised Contract Documents	Savings
<b>Division 15</b>			
Fire sprinklers	The Tower Group proposed \$34,000 savings to be submitted through shop drawing revisions which eliminate the deluge system and reduce pipe sizes.	The Contractor to provide revisions through shop drawings. Since it is not feasible to provide shop drawings before awarding the construction contract, the Contractor shall provide shop drawings in a timely manner for the A/E to review and approve within a schedule to be determined by the Contractor, A/E, and Owner. These modifications will be submitted by the Contractor as signed and sealed shop drawings. The system shall meet or exceed all applicable building code requirements and design criteria.	\$34,000.00
HVAC	The Tower Group Inc. has re-negotiated with the HVAC subcontractor and agrees to a savings of \$110,000 from the HVAC line item.	n/a	\$110,000.00
Silencers	Elimination of 2 silencers, numbers 4-2 and 4-5 in the back of the house.	ARQ and IMDC revised Contract drawings M3.20 and M6.10.	\$6,000.00
Plumbing - pipes	Change the above ground piping from cast iron to PVC, except in any plenum spaces, or as required by all applicable Codes.	ARQ and IMDC revised Specification sections 15405-Soil, Waste, & Vent System; 15406-Roof Drainage System; and 15420-Drainage and Vent Systems, no drawing changes required.	\$20,000.00
Plumbing - fixture	An alternate plumbing fixture package will be used.	IMDC & ARQ revised Contract drawings P0.00 and PA0.00, no specification changes required.	\$20,000.00
<b>Division 16</b>			
Electrical Fixtures Package	An alternate light fixture package shall be provided.	ARQ and IMDC revised Contract drawing E5.16.	\$56,000.00
Sound System & Equipment	An alternate ceiling speaker, and alternate microphone cable shall be used.	ARQ revised Contract drawing SC-101 and specification section 16700 - Sound and Communications System.	\$5,000.00
<b>Miscellaneous</b>			
Payment and performance bond	reduction based on lower contract amount	n/a	\$16,000.00
Impact Fees	waiver for county projects	n/a	\$130,000.00
<b>Total:</b>			<b>\$2,000,000.00</b>

Reviewed and Approved by:

 PRESIDENT  
The Tower Group, Inc.



# South Miami-Dade Cultural Center Construction Contract Award

<b>EXPENSES</b>		
<b>Capital Costs</b>		
The Tower Group, Inc. bid - Phase I Theater Building	34,569,000	
The Tower Group Inc. bid - Add Alternate Phase II Activity Building	3,669,000	
Sub-Total:		38,238,000
Bid negotiation/Cost savings measures		(2,000,000)
<b>Revised bid amount/ Construction Cost:</b>		<b>36,238,000</b>
Contingency (5%)	1,811,900	
Independent Private Sector Inspector General (.75% of construction)	271,785	
Office of the Inspector General (.25% of construction)	90,595	
<b>Total Contract Award:</b>		<b>38,412,280</b>
<b>Public Art Allowance</b> (1 1/2% of construction cost)		<b>543,570</b>
<b>A/E and Specialty Consultants Fees</b>		<b>3,324,814</b>
<b>Owner Development Costs &amp; FF&amp;E</b>		<b>2,233,673</b>
<b>TOTAL PROJECT COSTS</b>		<b>44,514,337</b>
<b>REVENUES</b>		
CDT - PAC Bond Revenues Series 1997	15,850,869	
Budgeted Interest Earnings	1,949,131	
Additional Interest Earnings	5,911,821	
CDT Bond Revenues (R-1408-00) (May 17, 2005 BCC item #7D)	10,055,016	
Safe Neighborhood Parks Bond Issue		
(Amount of grant reduced \$2500 for Parks Administrative fees.)	247,500	
<b>2004-05 Capital Budget Total:</b>		<b>34,014,337</b>
State of Florida Cultural Facilities Grant	500,000	
Building Better Communities General Obligation Bond Program	10,000,000	
<b>TOTAL PROJECT REVENUES</b>		<b>\$44,514,337</b>



## Attachment C

South Miami-Dade Cultural Center  
Cultural Affairs Project No. 9722  
ARQ Project No. 9944

Bid/Permit Issue  
July 6, 2004

### SECTION 00510

### CONTRACT

**THIS CONTRACT** made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Miami-Dade County, Florida, by its Board of County Commissioners, hereinafter called the Owner and The Tower Group, Inc. hereinafter called the Contractor:

WITNESSETH, that the said Contractor, for and in consideration of the payments hereinafter specified and agreed to be made by the County, hereby covenants and agrees to furnish and deliver all the materials required, to do and perform all the work and labor, in a satisfactory and workmanlike manner, required to complete this contract within the time specified, in strict and entire conformity with the Plans, Technical Specifications and other Contract Documents, which are hereby incorporated into this Contract by reference, for;

**PROJECT TITLE:** South Miami-Dade Cultural Center (Phases I and II)

**PROJECT NO:** 9722 SMDCC

The Contractor agrees to make payment of all proper charges for labor and materials required in the aforementioned work, and to defend, indemnify and save harmless the County and all its officers, employees and agents against and from all suits and costs of every kind and description, and from all damages to which the said County or any of its officers, agents and employees may be put, by reason of injury or death to persons or injury to property of others resulting from the performance of said work, or through the negligence of the Contractor, its officers, agents or employees or through any improper or defective machinery, implements or appliances used by the Contractor, its officers, agents or employees in the aforesaid work, or through any act or omission on the part of the Contractor, or its officers, agents or employees.

In consideration of these premises, the County hereby agrees to pay to the Contractor for the said work, when fully completed, the total maximum sum of

Thirty-six million two hundred thirty-eight thousand Dollars (\$36,238,000.00),

consisting of the following accepted items or schedules of work as taken from the Bid Form:

<u>Bid Total Phase I</u>	<u>\$ 34,569,000.00</u>
<u>Bid Total Phase II</u>	<u>\$ 3,669,000.00</u>
<u>Sub Total Phase I &amp; II</u>	<u>\$ 38,238,000.00</u>
<u>Negotiated Bid Reduction</u>	<u>\$ (2,000,000.00)</u>
<u>Bid Total Phase I &amp; II</u>	<u>\$ 36,238,000.00</u>
<u>Contingency Amount (5%)</u>	<u>\$ 1,811,900.00</u>
<u>IPSIG Audit Account (.75%)</u>	<u>\$ 271,785.00</u>
<u>Inspector General Audit Account (.25%)</u>	<u>\$ 90,595.00</u>

**TOTAL MAXIMUM CONTRACT AMOUNT**

\$ 38,412,280.00

The total maximum contract amount is subject to such additions and deductions as may be provided for in the Contract Documents. Partial and Final Payments will be made as provided for in the Contract Documents.



Attachment C

South Miami-Dade Cultural Center  
Cultural Affairs Project No. 9722  
ARQ Project No. 9944

Bid/Permit Issue  
July 6, 2004

CONTRACT (Cont'd)

IN WITNESS WHEREOF, the above parties have caused this Contract to be executed by their appropriate officials as of the date first above written.

BOARD OF COUNTY COMMISSIONERS  
OF MIAMI-DADE COUNTY, FLORIDA,

ATTEST: Harvey Ruvin Clerk

By: \_\_\_\_\_  
County Manager

By: \_\_\_\_\_  
Deputy Clerk

(MIAMI-DADE COUNTY SEAL)

CONTRACTOR (If Corporation)

THE TOWER GROUP, INC.  
(Corporate Name)

Approved for Form and Legal Sufficiency

By: \_\_\_\_\_  
President

\_\_\_\_\_  
(Assistant County Attorney)

Attest: \_\_\_\_\_  
Secretary

CONTRACTOR (if Partnership or Corporate Joint Venture)

(A) PARTNERSHIP OR  
CORPORATE JOINT VENTURER:

(B) PARTNERSHIP OR  
CORPORATE JOINT VENTURER:

\_\_\_\_\_  
(Corporate Name)

\_\_\_\_\_  
(Corporate Name)

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
President

Attest \_\_\_\_\_  
Secretary

Attest \_\_\_\_\_  
Secretary

(ATTACH ADDITIONAL SHEETS FOR EACH JOINT VENTURER, AS NEEDED)

NAME OF MANAGING JOINT VENTURER:

(CORPORATE SEAL)

By \_\_\_\_\_  
Signature of Authorized Representative of Joint Venture

Witnesses as to Above

\_\_\_\_\_  
\_\_\_\_\_



## SECTION 00700 - GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS

#### 1.1 DEFINITIONS

When used in these Contract Documents (defined below), or in related documents, the following terms, or pronouns are used in place of them, shall have the meanings given below:

- 1.1.01 Addendum:** A modification of the Plans, Specifications or other Contract Documents distributed to prospective Bidders prior to the opening of Bids.
- 1.1.02 Advertisement for Bids:** The public notice inviting the submission of Bids for the work.
- 1.1.03 Allowance Account(s):** Account(s) in which stated dollar amount(s) are included in the Contract for the purpose of funding portions of the work which are undetermined at the time of execution of the Contract, such as impact fees and permit fees, or for construction changes, for adjustments of quantities, for unit price work items or for special work deemed desirable by the County to be incorporated into the Contract. Performance of work, if any, under Allowance Account will be authorized by written Work Order(s) issued by the Director. Should the aggregate of charges for all approved Allowance Account expenditures be less than the amount of the Allowance Account, the balance shall remain with the Owner and used at the Director's discretion.
- 1.1.04 Architect/Engineer:** The Architectural or Engineering firm which prepared these Contract Documents and which acts as the County's agent in administration of the Contract in coordination with its Consultants and the Owner's Consultants. *Arquitectonica International, Inc.* or as otherwise designated by the Owner in writing.
- 1.1.05 Art in Public Places:** Miami-Dade County program established through Ordinance #94-12, providing 1.5 % of each County project's capital costs to fund a public art component within the Project. Coordination and installation of the artist's work is included as part of the scope of the Contractor's Services.
- 1.1.06 Artist:** person(s) chosen through the Art in Public Places program to design and fabricate or specify an integrated work of art for the Project. The term Artist as referred to throughout the Contract Documents means the Artist or its authorized representative.
- 1.1.07 As-Built Drawings:** Copies of the Drawings and Specifications marked in colored pencil or ink by the Contractor noting all deviations between the Work and the Contract Documents.
- 1.1.08 Beneficial Occupancy:** The County may, in its sole discretion, occupy any portion of the Work prior to Substantial Completion of the work. This will not relieve the Contractor of its obligation to fully complete the work in accordance with the Contract Documents.
- 1.1.09 Bid:** The written offer of a Bidder to perform the work.
- 1.1.10 Bid Bond:** A bond executed by a Bidder and its Surety in the attached form guaranteeing that the Bidder, if awarded the Contract, will execute the same and will timely furnish the required Performance Bond, Payment Bond, and evidence of Insurance.
- 1.1.11 Bidder:** Any individual, firm, partnership or corporation submitting a Bid in accordance with the Instructions to Bidders.



- 1.1.12 Bid Documents:** The Advertisement for Bids, Instructions to Bidders, Bid Form, Bid Bond, Contract, Performance Bond, Payment Bond, General Conditions, Special Provisions, Technical Specifications and Plans, together with all Addenda.
- 1.1.13 Bid Form:** The form on which Bids are submitted.
- 1.1.14 Bulletin:** Any written document initiated by the Architect/Engineer, advising the Contractor of proposed alterations, revisions, additions and deletions in the work and requesting itemized price quotations for such proposed changes.
- 1.1.15 Calendar Day:** Every day shown on the calendar.
- 1.1.16 Change Order:** A written agreement executed by the County, the Contractor and the Contractor's Surety, covering modifications to the Contract, recommended by the Architect/Engineer and approved by the Director.
- 1.1.17 Consultants:** Any professional firm or individual contracted by the Architect or Owner with respect to specific areas of design in the Project, or theatre & acoustical and sound & communications professionals (including but not limited to ARTEC Consultants, Inc., Fisher/ Dachs Associates, AMS Planning and Research, Inc.) contracted by the Owner. The term Consultant as referred to throughout the Contract Documents means the Consultant or its authorized representative.
- 1.1.18 Contract:** The written agreement between the County and the Contractor for performance of the Work in accordance with the requirements of the Contract Documents and for the payment of the agreed consideration.
- 1.1.19 Contract Documents:** The Instructions to Bidders, Bid Form, Bid Bond, Condition of Award Requirements, Contract, Performance Bond, Payment Bond, General Conditions, Special Provisions, Supplementary Provisions, Technical Specifications and Plans, together with all Addenda, Change Orders, Work Orders, Schedules and shop drawings.
- 1.1.20 Contractor:** The individual, firm, partnership, corporation or joint venture whose Bid is accepted and who enters into a Contract with the County and who is liable for the acceptable performance of the work and for the payment of all legal debts pertaining to the Work.
- 1.1.21 Contract Time:** The number of days allowed for completion of the work. The Contract Time will be stipulated in the Bid Form, unless extended by a Change Order.
- 1.1.22 County:** A political subdivision of the State of Florida, whose governing body is the Board of County Commissioners of Miami-Dade County, Florida.
- 1.1.23 County Manager:** The County Manager of Miami-Dade County, Florida.
- 1.1.24 Days:** Reference made to Days shall mean consecutive calendar days.
- 1.1.25 Delays:** May be Excusable or Non-Excusable. Excusable Delays may be Compensable or Non-Compensable, as further defined within the text of these General Conditions.
- 1.1.26 Direct Costs:** Direct Costs recoverable by the Contractor as a result of changes in the Work shall be limited to the actual additional costs of labor and materials installed as part of the Work and for the reasonable additional cost of rental for any Special Equipment or Machinery. Labor shall be limited to site labor costs, including Employer's Payroll Burden. Specifically excluded from labor are the costs of general foremen and site office personnel. Materials are limited to permanent materials required by the



drawings and specifications and materials approved by the Architect/Engineer as necessary to install the permanent materials in an efficient and workmanlike manner. Rental for Special Equipment and Machinery, not already mobilized on the project site, shall be an amount equal to the appropriate daily, weekly, or monthly rental rate for such equipment, in accordance with the current issue of Associated Equipment Distributor (AED) "Compilation of Nationally Averaged Rental Rates and Model Specifications for Construction Equipment" (not withstanding the caveats contained therein that such rental rates are not for use by government agencies) for each and every rental period (in weeks, days, or months as applicable) that the Special Equipment or Machinery is in use on the work plus any required mobilization. Payment for Special Equipment and Machinery already mobilized on the project site, shall not exceed the monthly rate stated in the AED divided by 176 per hour that the Special Equipment and Machinery is in use on the work, plus any required re-mobilization. For Special Equipment or Machinery not listed in said document the Contractor shall be paid a rental rate corresponding to the average prevailing rental rate for such equipment or machinery in Miami-Dade County, Florida, subject to approval by the Architect/Engineer. No additional payment shall be made to the Contractor for fuel, lubricants, fair wear and tear, transportation, insurance or depreciation. Any equipment or machinery not designated by the Architect/Engineer as Special Equipment and Machinery shall be considered Overhead.

- 1.1.27 Director:** The Director of the Miami-Dade County Department of Cultural Affairs, or his/her Designee. The Director's mailing address is: 111 NW 1<sup>st</sup> Street, Suite 625, Miami, FL 33128.
- 1.1.28 Employer's Payroll Burden:** The term "employer's payroll burden" shall include the following items: costs of workers' compensation insurance, applicable fringe benefits and liability insurance, employer social security contribution, employer pension contributions, unemployment insurance and health insurance.
- 1.1.29 Extra Work:** An item of work not provided for in the awarded contract as previously modified by Change Order or Work Order, but which is found by the Architect/Engineer to be necessary to complete the work within the intended scope of the Contract.
- 1.1.30 Field Representative:** An authorized representative of the Owner providing administrative and construction inspection services during the construction, and closeout phases of the Contract.
- 1.1.31 Lessee:** Any individual, partnership or corporation having a tenant relationship with the County.
- 1.1.32 Liquidated Damages:** The amount that the Contractor accepts, as stipulated in the Bid Form, that will be deducted from the Contract Sum for each Calendar day of delay due to a Non-excusable Delay.
- 1.1.33 Liquidated Indirect Costs:** The amount stipulated in the Bid Form, that will be added to the Contract sum for each calendar Day of delay due to a Compensable Delay. The Contractor accepts this sum as full compensation for the Contractor's and all its Subcontractors' Indirect Costs, for each day of Excusable Compensable Delays.
- 1.1.34 Miami-Dade County Department of Cultural Affairs:** A department of Miami-Dade County government.
- 1.1.35 Notice To Proceed (NTP):** The written communication issued by the Department of Cultural Affairs to the Contractor directing the Contractor to begin contract work and establishing the date of commencement of the work.



- 1.1.36 Overhead (Indirect Costs):** Overhead includes any costs other than Direct Costs, as defined herein, incurred by the Contractor and all its Subcontractors of any tier in the performance of the Contract. Overhead includes, but is not limited to all costs associated with: project bond premiums, project insurance premiums, costs of supervision, coordination, superintendents, general foremen, consultants, schedulers, cost controllers, accountants, office administrative personnel, time keepers, clerks, secretaries, watch persons, small tools, equipment or machinery not designated by the Architect/Engineer as Special Equipment or Machinery, utilities, rent, telephones, facsimile machines, computers, word processors, printers, plotters, computer software, all expendable items, job site and general office expenses, profit, extended jobsite general conditions, interest on monies retained by the County, escalated costs of materials and labor, decreased productivity, home office expenses or any cost incurred that may be allocated from the headquarters of the Contractor or any of its subcontractors, loss of any anticipated profits, loss of bonding capacity or capability losses, loss of business opportunities, loss of productivity on this or any other project, loss of interest income on funds not paid, costs to prepare a bid, cost to prepare a quote for a Change in the Work, costs to prepare, negotiate or prosecute claims, costs of legal and accounting work, costs spent to achieve compliance with applicable laws and ordinances, loss of projects not bid upon, loss of productivity or inefficiencies in the Work from any cause.
- 1.1.37 Owner:** The term Owner as used in this Contract shall mean the Miami-Dade County Board of County Commissioners or the Department of Cultural Affairs, but it excludes the regulatory departments of Planning, Development and Regulation (Building and Zoning); Department of Environmental Resources Management (DERM); Public Works, Water & Sewer, and Fire Rescue or their successors.
- 1.1.38 Performance and Payment Bond:** Bond executed by the Contractor and his Surety, on the attached form, assuring that the Contractor will, in good faith, perform and guarantee the work in full conformity with the terms of the Contract Documents and will promptly pay all persons supplying the Contractor with labor, materials, or supplies, used directly or indirectly by the Contractor in the prosecution of the Work.
- 1.1.39 Plans:** The drawings, or reproductions thereof, prepared by the Architect/Engineer, which show the locations, character, dimensions and details of the work to be done and which are part of the Contract Documents.
- 1.1.40 Project:** The construction and services required by the Contract Documents, which includes all labor, materials, equipment, and services to be provided by the Contractor to fulfill the Contractor's obligations.
- 1.1.41 Project Manual:** The portion of the Contract Documents, prepared by the Architect/Engineer, other than the Plans.
- 1.1.42 Project Testing Laboratory:** The laboratory(ies) employed by the County to perform under the direction of the Architect/Engineer all quality assurance testing.
- 1.1.43 Site, Project Site, Work Site, Construction Site, Job Site:** The location(s) at which the work under this Contract is to be accomplished, as shown on the Plans.
- 1.1.44 Special Equipment or Machinery:** Equipment or machinery such as power driven rollers, tractors, backhoes, bulldozers, excavators, trucks (excluding "pickup" trucks), cranes, industrial railroad equipment, or any other such equipment approved by the Architect/Engineer as necessary to complete the Project in an efficient and workmanlike manner. This equipment or machinery must be a requirement for the economical performance of the work to be accomplished by the Contractor or by a Subcontractor (of any tier). Special Equipment or Machinery shall not include small tools or pieces of



equipment considered to be standard equipment included in the basic inventory of a Contractor or a Subcontractor (of any tier).

**1.1.45 Subcontractor:** Any individual, firm, partnership, joint venture or corporation supplying the Contractor with labor, materials, supplies and equipment used directly or indirectly by the Contractor in the prosecution of the Work.

**1.1.46 Substantial Completion:** Substantial Completion of the Work shall occur when the Architect/Engineer certifies that the Work is sufficiently complete, in accordance with the Contract Documents, so that the County may use the Work for the use for which it is intended or for such other use which the County in its sole discretion may determine to be appropriate under the circumstances, and after receipt of the final certificate of occupancy.

**1.1.47 Surety:** The bonding company furnishing the Bonds required of a Bidder and of the Contractor.

**1.1.48 Technical Specifications:** The general term comprising all the written directions, provisions and requirements contained herein, entitled "Technical Specifications," those portions of Standard Specifications to which reference is specifically made in the Technical Specifications, and any Addenda, Work Orders and Change Orders that may be issued for the Contract, all describing the work required to be performed, including detailed technical requirements as to labor, materials, supplies and equipment and standards to which such work is to be performed.

**1.1.49 Unit Prices:** There are two types of unit price items: "Major Unit Price Item" and "Minor Unit Price Item". The term "Major Unit Price Item" shall refer to any single item of work on the Bid Form for which the extended price on the Bid Form (quantity times unit price) is at least 20% of the Total Amount Bid in the Bid Form. The term "Minor Unit Price Item" shall refer to those item(s) of work not meeting the criteria for "Major Unit Price Item".

**1.1.50 Work:** The construction and services required by the Contract Documents, which includes all labor, materials, equipment, and services to be provided by the Contractor to fulfill the Contractor's duties and obligations imposed by the Contract Documents.

**1.1.51 Work Order:** A written order, authorized by the Director, directing the Contractor to perform work under a specific Allowance Account or which directs the Contractor to perform a change in the work that does not have a monetary impact.

## ARTICLE 2 - ADMINISTRATION OF THE CONTRACT

### 2.1 INTENT OF CONTRACT

**2.1.01** The intent of the Contract is to include all necessary items for the proper completion of the Work by the Contractor so the Owner may have a functioning facility which it may use as intended. The Contractor shall perform, without additional compensation, such incidental work as necessary to complete the Work, so that it will meet the requirements for which the Project was intended, in a satisfactory and workmanlike manner.

**2.1.02** It is specifically agreed between the parties executing the Contract that it is not intended by any of the provisions of any part of the Contract to create the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the Contract to



maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

- 2.1.03** No acceptance, order, measurement, payment, or certificate of or by the Owner or its employees or agents shall either stop the Owner from asserting any rights or operate as a waiver of any provision hereof or of any power or right herein reserved to the Owner or of any rights to damages herein provided.

## **2.2 OTHER CONTRACTS**

- 2.2.01** The Owner may award other contracts for other work on the Site. The Contractor shall fully cooperate with such other contractors and shall carefully fit his own work to that provided under other contracts as may be directed by the Field Representative. The Contractor shall not commit or permit any act, which will interfere with the performance of work by any other contractors, or fail to perform such acts as required to avoid interference with the performance of work by any other contractor.

- 2.2.02** In the event of interference between the work of the Contractor and other contractor(s) working concurrently at the Site, the Field Representative will instruct the Contractor as to which Work has priority in performance and such instructions shall be binding upon the Contractor. The Contractor shall not have any claim against the Owner, the Architect/Engineer, Consultants or the Field Representative for any additional compensation whatsoever in connection therewith.

- 2.2.03** The Contractor shall conduct its operations so as not to interfere with or hinder the progress of completion of the work being performed by other contractors.

## **2.3 CONDITIONS AFFECTING THE WORK**

- 2.3.01** The Contractor shall be responsible for taking steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the Work or the cost thereof. Failure by the Contractor to do so will not relieve him from responsibility for successfully performing work without additional expense to the Owner. The Owner will not be responsible for any understanding or representations concerning conditions, unless such understanding or representations are expressly stated in the Contract.

## **2.4 DIFFERING SITE CONDITIONS**

- 2.4.01** The Contractor shall immediately, and before such conditions are disturbed, notify the Architect/Engineer and the Field Representative in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

- 2.4.02** The Field Representative will promptly investigate the conditions, and if such conditions materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for performance of any part of the Work under the Contract, the Contractor may



file a Request for Change Order to the Owner within the time frames provided in the Contract Documents.

- 2.4.03** If the Owner is not given written notice prior to the conditions being disturbed, the Contractor will be deemed to have waived his right to additional time or compensation arising out of such changed conditions.

## **2.5 PLANS, SPECIFICATIONS AND OTHER CONTRACT DOCUMENTS**

- 2.5.01** Plans showing general outlines and details necessary for a comprehensive understanding of the work form a part of the Contract Documents. The total number and the titles of the drawings constituting the Plans are given in Division 1 of the Project Manual. All work under the Contract shall be performed in all respects in compliance with the requirements of the Contract Documents.
- 2.5.02** The Contract Documents provide for a complete work, and may have been prepared in divisions of various crafts, trades and other categories of work. The Contractor is responsible for the performance of all work under the Contract regardless of any such divisions, and shall ensure that all of the work is performed and completed.
- 2.5.03** The Owner will provide the Contractor with two copies of the permit plans (one to be kept and updated by the Contractor as the As-Built set) and three copies of the Project Manual for the Contractor's use during the execution of the Contract. The Contractor may reproduce these documents for its use during the performance of the work under this Contract.
- 2.5.04** The Contractor shall maintain at the Site at all times at least one copy of Plans, Technical Specifications and all other Contract Documents, together with at least one complete set of approved Shop Drawings and approved samples.
- 2.5.05** The Contractor shall make available at the job site one copy of each referenced standards and/or specifications for the Contractor's and the Field Representative's use during the time that work covered by the standards and/or specifications is underway.
- 2.5.06** The Contract, Plans, Specifications, and all referenced standards cited are essential parts of the Contract requirements. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work.
- 2.5.07** The Contractor shall not take advantage of any apparent error, omission, discrepancy or ambiguity on the Plans or Specifications. If the Contractor finds any error, omission, discrepancy or ambiguity in the Plans or Technical Specifications, the Contractor shall refer the same to the Field Representative for an interpretation and decision by the Architect/Engineer, and such decision shall be final.
- 2.5.08** The Architect/Engineer shall have the right to correct apparent errors or omissions in the Plans and Technical Specifications and to make such interpretations as he may deem necessary for the proper fulfillment of the Contract Documents. During the course of the work, should any conflicts, ambiguities, or discrepancies be found that are not addressed or any discrepancies between the Plans and the Technical Specifications to which the Contractor has failed to call attention before submitting the Bid, then the Architect/Engineer will interpret the intent of the Plans and Technical Specifications and the Contractor hereby agrees to abide by the Architect/Engineer's interpretation and



agrees to carry out the work in accordance with the decision of the Architect/Engineer. In such event the Contractor will be held to have included in the Bid the most expensive material and/or method of construction.

- 2.5.09** When a material, article, or equipment is designated by a brand name, and more than one brand name is listed, it will be understood that the design is based on one of the brand name listed products. The Contractor will be responsible for all coordination necessary to accommodate the material, article or equipment actually being provided without additional cost to the Owner.
- 2.5.10** The organization of the Contract Documents into divisions, sections and articles, and the arrangement of Drawings does not restrict or limit the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.
- 2.5.11** Product and Reference Standards:
- A. When descriptive catalog designations including manufacturer's name, product brand name, or model number are referred to in the Contract Documents, such designations shall be considered as being those found in industry publications of current issue on the date of the first advertisement for bids.
  - B. When standards of Standards Organization such as ASTM, AASHTO, AWS or ANSI, trade societies, or trade associations are referred in the Contract Documents by specific date of issue, these shall be considered a part of this Contract. When such references do not bear a date of issue, the current published edition on the date of the first advertisement for bids shall be considered as part of the Contract.
- 2.5.12** Where in the Contract Documents an item is identified by a particular manufacturer's name, model or other code it shall be interpreted to include other manufacturers' products of like and equal quality whether the words "or equal" are included or not.
- 2.5.13** Whenever a particular manufacturer's product is required, to the exclusion of all others, appropriate language is included in the Contract Documents.
- 2.5.14** Wherever the terms, "as directed," "ordered," "permitted," "designated," "as approved," "approved equal," "or equal," "acceptable," and other words of similar meaning which authorize an exercise of judgment are used in the Contract Documents, such judgment shall be vested only in the Architect/Engineer and/or the Owner.

## **2.6 CONFORMITY WITH PLANS AND SPECIFICATIONS**

- 2.6.01** The entire work and each part thereof shall be constructed at the location, elevation, grade and gradient specified, and in proper alignment and adjustment. The Contractor shall provide all frames, forms, falsework, shoring, guides, anchors and temporary structures required to ensure these results.
- 2.6.02** No deviation from the approved Plans, Technical Specifications and other Contract Documents shall be permitted without the prior written approval of the Architect/Engineer, which approved deviation(s) shall be documented to the extent required by the Contract Documents.



## **2.7 AUTHORITY OF THE ARCHITECT/ENGINEER AND THE CONSULTANTS**

- 2.7.01** The Architect/Engineer and/or Consultants shall respond to questions which may arise as to the quality and acceptability of materials furnished, work performed, and as to the manner of performance and rate of progress of the work. The Architect/Engineer shall decide all questions which may arise as to the interpretation of the Specifications or Plans relating to the work, and the fulfillment of the Contract on the part of the Contractor.
- 2.7.02** The Architect/Engineer or Consultants are not authorized to revoke, alter, or waive any requirement of the Contract.
- 2.7.03** Where the Contract Documents provide for decisions or other actions by the Architect/Engineer, the same shall be final and binding upon the Contractor.
- 2.7.04** The Architect/Engineer and Consultants shall have free access to the work and materials at all times to facilitate the performance of his duties.
- 2.7.05** The Architect/Engineer shall have the right to reject any material or work performed which does not meet the requirements of the Contract Documents. When the Architect/Engineer or Consultants discover any work in progress that does not meet the requirements of the Contract Documents, the Architect/Engineer shall reject that portion of the work affected and shall confirm such rejection in writing, as soon as practical, detailing the reasons for the rejection. Work rejected by the Architect/Engineer will not be paid for.
- 2.7.06** The fact that the Architect/Engineer or Consultants have not made early discovery of materials furnished or work performed which does not meet the requirements of the Contract Documents, shall not bar the Architect/Engineer from subsequently rejecting said materials or work.
- 2.7.07** The observation of the work and actions by the Architect/ Engineer and the Consultants, as herein provided, shall not be construed as undertaking supervisory control of the construction work or of means and methods employed by the Contractor or his subcontractors and shall not relieve the Contractor from any of his responsibilities or obligations under the Contract; the Contractor shall not request or attempt to require the Architect/Engineer or Consultants to undertake such supervisory control or to administer, to supervise, to inspect, to assist, or to act in any manner so as to relieve the Contractor from such responsibilities or obligations.

## **2.8 AUTHORITY AND DUTIES OF THE FIELD REPRESENTATIVE**

- 2.8.01** The Field Representative will administer the Contract and the orders of the Owner are to be given through the Field Representative. The Field Representative shall determine the amount and quality of the several kinds of work performed and materials furnished which are to be paid for under the Contract.



- 2.8.02** The Field Representative will observe the Contractor's work for compliance with the Contract Documents. Such observation shall extend to all or any part of the work done and to the preparation, fabrication, or manufacture of the material to be used.
- 2.8.03** The Field Representative shall call the Contractor's attention to faulty workmanship or defective materials and shall reject work and materials not conforming to the requirements of the Contract Documents.
- 2.8.04** When any work in progress does not meet the requirements of the Contract Documents, the Field Representative shall have the authority to order the Contractor to shut down that portion of the work affected and shall confirm this order in writing as soon as practicable, detailing the reasons for the shutdown. Work performed in violation of the Field Representative's order to shutdown will not be accepted or paid for.
- 2.8.05** The Field Representative is not authorized to revoke, alter, or waive any requirements of the contract.
- 2.8.06** When any portion of the work is to be performed away from the site, the Contractor shall notify the Field Representative, in reasonable time, where and when such work is to be done, and shall make arrangements for access thereto by the Field Representative in order that same may be inspected by him.
- 2.8.07** The Field Representative shall have the right to reject any material or work performed which does not meet the requirements of the Contract Documents. When the Field Representative discovers any work in progress that does not meet the requirements of the Contract Documents, the Field Representative shall reject that portion of the work affected and shall confirm such rejection in writing, as soon as practical, detailing the reasons for the rejection. Work rejected by the Field Representative will not be paid for.
- 2.8.08** The fact that the Field Representative has not made early discovery of materials furnished or work performed which does not meet the requirements of the Contract Documents, shall not bar the Field Representative from subsequently rejecting said materials or work.
- 2.8.09** The Field Representative shall not act as a foreman or perform other duties for the Contractor, nor interfere with the management of the work by the Contractor.
- 2.8.10** The administration, observation of the work, and actions by the Field Representative, as herein provided, shall not be construed as undertaking supervisory control of the construction work or of means and methods employed by the Contractor or his subcontractors and shall not relieve the Contractor from any of his responsibilities or obligations under the Contract; the Contractor shall not request or attempt to require the Field Representative to undertake such supervisory control or to administer, to supervise, to inspect, to assist, or to act in any manner so as to relieve the Contractor from such responsibilities or obligations.
- 2.8.11** The Field Representative shall decide all questions relating to the rights of different contractors on the project.



## **2.9 OBSERVATION OF THE WORK**

- 2.9.01** All materials and each part or detail of the work shall be subject to observation by the Field Representative, the Architect/Engineer, and the Consultants. The Field Representative, Architect/Engineer, and the Consultants shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required.
- 2.9.02** If either the Architect/Engineer or the Field Representative requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Contract Documents. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as Extra Work; but should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at no additional cost to the Owner.
- 2.9.03** Any work done or materials used without observation by the Field Representative may be ordered removed and replaced at the Contractor's expense unless the Field Representative failed to observe the work after having been given reasonable notice in writing.

## **2.10 OTHER AUTHORIZED INSPECTION**

- 2.10.01** The Owner, the Lessee(s) and other agencies having jurisdiction over the work hereunder shall be afforded free access to the site to perform such inspections and tests as may be required to determine conformance of the Work with the Contract Documents.

## **ARTICLE 3 - OWNER**

### **3.1 OWNER PROVIDED INFORMATION**

- 3.1.01** The records of borings, test excavations and other subsurface investigations, if any, are offered as information only and solely for the convenience of the Contractor. The Owner does not warrant or guarantee either that said records are complete or that the said records will disclose the actual subsurface conditions. The interpretation of the records and the conclusions drawn there from as to the actual existing subsurface conditions are the sole responsibility of the Contractor.
- 3.1.02** Any estimates of quantities of work or materials, based on said borings, test excavations and other subsurface investigations are not warranted to indicate the true quantities or distribution of quantities.

### **3.2 OWNER PROVIDED ITEMS**

- 3.2.01** The Owner will contract a Threshold Inspector to perform inspection services during construction of the Project pursuant to Florida Statutes.



- 3.2.02** The Contractor shall schedule, coordinate delivery of, store, install, and otherwise incorporate into the Project any materials, equipment, or item that may be donated to the Owner for the Project. Contractor shall maintain all responsibilities for the donated item(s) as if the item had been supplied by the Contractor. Prospective donated items for this Project include all the glazing for the Theater Building.
- 3.2.03** If the Owner elects to pursue a direct purchase program, the Contractor shall aid the Owner in the procurement of tax-exempt materials and equipment pursuant to Section 00810 of the Contract Documents.
- 3.2.04** The Contractor shall choose vendors, determine quantities, schedule, coordinate delivery of, store, install, and otherwise handle and incorporate into the Project any materials, equipment, or item that the Owner may elect to purchase directly for the Project. Contractor shall maintain all responsibilities for the owner-purchased item(s) as if the item had been supplied by the Contractor.
- 3.2.05** Savings achieved through all Owner's direct purchase program shall become part of the project's contingency account, and the Contractor shall not be entitled to these funds.

### **3.3 INTEREST OF PUBLIC OFFICIALS**

- 3.3.01** No officer or employee of Miami-Dade County during his tenure or for two years thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

## **ARTICLE 4 - CONTRACTOR**

### **4.1 PRE-CONSTRUCTION CONFERENCE**

- 4.1.01** A Pre-construction Conference will be held prior to the issuance of the Notice to Proceed to discuss the work to be performed under this Contract. The Contractor and his major Subcontractors shall be required to attend this meeting. The Contractor will be advised of the time, date and location of the meeting.

### **4.2 COMMENCEMENT AND PROSECUTION OF WORK**

- 4.2.01** Within a reasonable time after the execution of the Contract, the Owner will initiate a written notice to the Contractor to proceed with the work, which said Notice to Proceed (NTP) shall direct the Contractor to commence work on a certain day. The time within which all of the work is to be completed following the giving of the Notice to Proceed shall be as stipulated in the Bid Form of these Contract Documents.
- 4.2.02** The Contractor shall commence the work on the day stated in the Notice to Proceed and shall prosecute the work in a manner that will insure completion within the specified time.



- 4.2.03** The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by the Contract Documents. All workers shall have sufficient skill and experience to properly perform the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.
- 4.2.04** All proposed equipment shall be of sufficient size and in such mechanical condition as to meet requirements of the work, producing a satisfactory quality of work. Equipment used on any portion of the work shall be such that no injury to previously completed work, or adjacent property, will result from its use.
- 4.2.05** When the Contract Documents specify the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized in writing by the Architect/Engineer. If the Contractor desires to use a method or type of equipment other than specified in the Contract, he may request permission from the Architect/Engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with Contract requirements. If, after trial use of the substituted methods or equipment, the Architect/Engineer determines that the work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality, or take such other corrective action as the Architect/Engineer may direct, at no additional cost to the Owner. No change will be made to the Contract price(s) nor in Contract Time as a result of authorizing a change in methods or equipment under this Article.

### **4.3 CONTRACTOR'S RESPONSIBILITY FOR THE WORK**

- 4.3.01** The Contractor shall be responsible for the complete performance for all of the work under the Contract, and for the methods, means, and equipment used in performing the Contract and for all materials, tools, apparatus and property of every description used in connection therewith.
- 4.3.02** Contractor shall negotiate and subcontract the Work in a manner that the County's Ordinances and the Community Small Business Enterprise and Community Workforce Program goals for the Project can be met.
- 4.3.03** The Contractor shall give constant attention to the work to facilitate the progress thereof, and he shall cooperate with the Architect/Engineer and the Field Representative and with other contractors in every way possible.
- 4.3.04** The Contractor shall maintain the work during construction and until the work is accepted by the Owner.
- 4.3.05** Until Substantial Completion or Beneficial Occupancy by the Owner of any part or all of the work as provided in these Contract Documents, it shall be under the charge and care of the Contractor, and he shall take every necessary precaution to protect against loss or



damage to any part of the work by the action of the elements or from any other cause whatsoever, whether arising from execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good at his own expense all loss or damage to any portion of the work occasioned by any of the foregoing causes before its completion and acceptance.

**4.3.06** The Contractor shall be responsible for scheduling and coordinating the work of all crafts and trades required to perform the Work and to complete the Work within the prescribed time. Any inefficiency or loss of productivity in the labor, materials, or Special Equipment of the Contractor or his Subcontractors of any tier, from any cause, shall be the responsibility of the Contractor. No reimbursement of these or any Direct Costs can be requested by or granted to the Contractor or any of his Subcontractors of any tier for inefficiency or loss of productivity in labor, materials, or Special Equipment. Additional Direct Costs may only be paid to the Contractor as a result of additional work added to the Contract scope of work.

**4.3.07** Contractor shall receive from Subcontractors and separate contractors, and review, all certificates of insurance, shop drawings, product data, samples and other submittals; coordinate them with information contained in the Contract Documents and transmit to the Architect/Engineer and the Field Representative those recommended for approval; and develop a routing schedule and log of all submittals.

**4.3.08** The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the work. A special permit will not relieve the Contractor of liability for damage that may result from the moving of material or equipment. The operation of equipment of such weight or so loaded to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed or as specified in the Technical Specifications. The Contractor shall be responsible for all damage done by its hauling equipment and shall correct such damage at its own expense.

#### **4.4 CONTRACTOR'S KEY PERSONNEL, FACILITIES AND EQUIPMENT**

**4.4.01** The Contractor shall employ key personnel to include a competent project executive, project manager(s), superintendent(s) and necessary assistants; who shall be in full-time attendance at the project site for the duration of the work.

**4.4.02** The Contractor shall maintain adequate staffing levels at all times for the duration of the Contract, and shall have at all times on the site of the Work, key personnel capable of reading and thoroughly understanding the Contract Documents, and be able to effectively communicate with the Owner, Field Representative, Architect/Engineer, Consultants, and Subcontractors. Key personnel shall have full authority to promptly supply such materials, tools, plant, equipment, and labor as may be required.

**4.4.03** Ten percent (10%) of the Contractor's next monthly payment shall be withheld from the next progress payment due the Contractor when (a) either the project executive, project manager(s), or superintendents are at any time for any reason (other than illness, vacation or resignation of employment) not available for work on the Project, and (b) the Contractor has not provided a replacement or substitute satisfactory to the Owner, in its sole discretion. The withheld portion of the Contract Sum shall be paid to the Contractor



with first payment due the Contractor after the Contractor has made available the required persons.

- 4.4.04** The Contractor shall furnish all labor, materials, services and equipment sufficient for the prosecution of the work in an acceptable manner and at a satisfactory rate of progress. Contractor shall retain and coordinate the professional services of surveyors, and any special consultants as may be required to complete the Work at no additional cost to the Owner.
- 4.4.05** All equipment, tools, and machinery used in the prosecution of the work shall be maintained in a safe working condition and shall be appropriate for the work to be performed.
- 4.4.06** The Contractor shall submit to the Architect/Engineer the daily manpower count, by trade and position, no later than noon of the day following the day covered.
- 4.4.07** Contractor shall provide temporary construction office facilities, to include a separate air-conditioned trailer with toilet facilities, equipped to operate as a satellite office for the Field Representative with appropriate office furniture for three (3) staff members (desks, rolling chairs, secure filing cabinets, conference table and chairs, equipment and communications (phones, fax machine, on-site radios/cell phones, etc.); provide separate temporary Project facilities, equipment, materials and services for common use among Subcontractors, and any other provisions per Section 01500 of the Contract Documents.

#### **4.5 ENVIRONMENTAL PROTECTION**

- 4.5.01** The Contractor shall comply with all Federal, state, and local laws and regulations controlling pollution of the environment. It shall take necessary precautions to prevent pollution of streams, lakes, ponds, underground waters, aquifers and reservoirs with fuels, oils, bitumens, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

#### **4.6 DAILY LOGS, WEEKLY CONSTRUCTION COORDINATION MEETINGS, AND MONTHLY PROGRESS REPORTS**

- 4.6.01** Contractor shall keep a daily log containing a record of weather, Subcontractors' work on the project, number of workers, work accomplished, problems encountered, and other similar relevant data as the Field Representative may require. The Contractor shall make the log available to the Owner and Architect/Engineer on a weekly basis or upon request by the Owner.
- 4.6.02** Contractor shall schedule, produce and distribute meeting minutes, and chair weekly construction progress meetings. These meetings are intended to determine job progress, identify job problems, assist in solving and preventing job problems, and promote coordination with all entities involved in the Contract and with Owner Consultants and other contractors. The Contractor shall cause Subcontractors and Suppliers to attend as he deems advisable, or as requested by the Architect/Engineer. No less than two (2) business days prior to each meeting, the Contractor shall provide and distribute an agenda for the meeting, along with a progress report. The same



distribution shall include minutes from the past week's progress meeting. Meetings shall be held at the Contractor's trailer, unless otherwise agreed by the Field Representative, and all project documentation shall be readily accessible for such meetings.

- 4.6.03** Contractor shall record the progress of the Project; submit written monthly construction progress reports to the Owner, Architect/Engineer, and Consultants pursuant to Section 01311(1.06) of the Specifications.

#### **4.7 SHOP DRAWINGS**

- 4.7.01** The Contractor is responsible for the preparation of detailed shop drawings necessary for the fabrication, erection and construction of all parts of the work in conformity with the Contract Documents and requirements of Division 1 of the Project Manual.

#### **4.8 SUBSTITUTION**

- 4.8.01** For convenience in designation in the Contract Documents, certain materials, articles, or equipment may be designated by a brand or a trade name or the name of the manufacturer, together with catalog designation or other identifying information. When Contract Documents specifically disallow substitution, the specified product shall be provided. Alternative material, article, or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed **ONLY DURING THE BIDDING PERIOD**. No substitution requests will be accepted after the bid request period.
- 4.8.02** Acceptance on another project, by the Owner, of a product other than that specified for this project does not constitute evidence of its equality with the product specified, nor its suitability for this project.

#### **4.9 APPROVAL OF SOURCES OF SUPPLY OF MATERIALS**

- 4.9.01** The Contractor shall submit a complete list of the sources of supply and the manufacturers of all items of materials, equipment and machinery requested by the Architect/Engineer for approval prior to the commencement of any work.

#### **4.10 APPROVAL AND ACCEPTANCE OF MATERIALS AND SALVAGE OF MATERIALS**

- 4.10.01** The materials used on the work shall conform to the requirements of the Contract Documents and may be subject to inspection, testing and approval by the Architect/Engineer before incorporation in the work. Unless otherwise specified, such materials that are manufactured or processed shall be new (as compared to used or reprocessed).
- 4.10.02** In order to expedite the acceptance of materials, the Architect/Engineer may require the Contractor to furnish complete statements as to the origin, composition, and



manufacture of all materials to be used in the work. Such statements shall be furnished sufficiently in advance of the delivery of such materials.

- 4.10.03** At the Architect/Engineer's option, materials may be approved at the source of supply before delivery is slated. If it is found after trial that sources of supply for previously approved materials do not produce specified products, the Contractor shall furnish materials from other sources.
- 4.10.04** Any work in which untested materials are used without approval or written permission of the Architect/Engineer shall be performed at the Contractor's risk. Materials found to be unacceptable and unauthorized will not be paid for and, if directed by the Architect/Engineer, shall be removed at the Contractor's expense. Unless otherwise designated, Quality Assurance tests performed in accordance with the requirements of Contract Documents will be made by the Architect/Engineer or the Project Testing Laboratory at the expense of the Owner. Samples will be taken by the Architect/Engineer or the Project Testing Laboratory. All materials being used are subject to inspection, test, or rejection at any time prior to or during incorporation into the work and until Final Acceptance of the Work. Copies of all tests will be furnished to the Contractor's representative at his request.
- 4.10.05** Samples of all materials to be tested, upon which the acceptance or rejection thereof is to be based, shall be taken by the Architect/Engineer or the Project Testing Laboratory. Materials may be sampled either prior to shipment or after being received at the Site.
- 4.10.06** The Contractor shall provide such facilities as the Architect/ Engineer or the Testing Laboratory may require for conducting field tests and for collecting and forwarding samples. The Contractor shall not use or incorporate into the work any materials represented by the samples until tests have been made and the materials found to be acceptable. Only materials conforming to the requirements of the Contract Documents shall be used in the work.
- 4.10.07** Materials or assemblies not conforming to the requirements of the Contract Documents shall be considered unacceptable and shall be rejected. The Contractor shall remove any rejected material or assembly from the site of the work, unless otherwise instructed by the Architect/Engineer. Rejected material or assemblies, the defects of which have been corrected by the Contractor, shall not be returned to the site of the work until such time as the Architect/Engineer has approved its use, in writing, in the work.
- 4.10.08** Ownership of all salvaged equipment and materials, surplus excavation, etc., shall remain with the Contractor, unless stated otherwise in the Contract Documents, who shall legally dispose of such equipment, materials and surplus excavation, etc. at a legal disposal site(s) provided by and at the expense of the Contractor, away from the project site.
- 4.10.09** The Architect/Engineer may direct the Contractor to dispose of all or any class of salvage material to a fill or storage site on or adjacent to the work area, at no additional cost to the Owner.



- 4.10.13** The Owner will have no responsibility to the Contractor concerning changes in material cost due to fluctuations in monetary exchange rates.

#### **4.11 CERTIFICATES OF COMPLIANCE**

- 4.11.01** The Architect/Engineer may permit the use, prior to sampling and testing, of certain materials or assemblies when accompanied by manufacturer's certificates of compliance stating that such materials or assemblies fully comply with the requirements of the Contract Documents. The certificate shall be signed by the manufacturer. Each lot of such materials or assemblies delivered to the work must be accompanied by a certificate of compliance in which the lot is clearly identified.

- 4.11.02** Materials or assemblies used on the basis of certificates of compliance may be sampled and tested at any time and if found not to be in conformity with the requirements of the Contract Documents will be subject to rejection whether in place or not.

- 4.11.03** When a material or assembly is specified by "brand name or equal" and the Contractor elects to furnish the specified "brand name," the Contractor shall be required to furnish the manufacturer's certificate of compliance for each lot of such material or assembly delivered to the work. Such certificate of compliance shall clearly identify each lot delivered and shall certify as to:

- A. Conformance to the specified performance, testing, quality or dimensional requirements; and
- B. Suitability of the material or assembly for the use intended in the work.

- 4.11.04** If the Contractor proposes to furnish an "or equal" material or assembly, he shall furnish the manufacturer's certificates of compliance as hereinbefore described for the specified brand name material or assembly. However, the Architect/Engineer and/or Consultants shall be the judge as to whether the proposed "or equal" is suitable for use in the work.

- 4.11.05** The Architect/Engineer reserves the right to refuse permission for use of materials or assemblies on the basis of certificates of compliance.

#### **4.12 STORAGE OF MATERIALS AND EQUIPMENT**

- 4.12.01** Before commencing work, the Contractor shall consult with the Architect/Engineer as to available space for temporary storage of materials, location of temporary structures, if any, equipment and other property of the Contractor. Locations determined for such storage of materials, temporary structures, equipment and other property shall be temporary, and the Contractor shall be required to relocate the same as directed by the Architect/Engineer to avoid interference with operations of the Owner or with the work of other contractors on the job site. Temporary structures shall be neat in appearance, shall not constitute a fire hazard and shall be properly maintained.



**4.12.02** Any space that the Contractor may require for plant, equipment, storage or other purposes, in addition to that set forth above, shall be procured by the Contractor and the cost thereof shall be included in the price(s) Bid for the work. Stored materials, structures, equipment and other property shall remain the property of the Contractor and he shall be solely responsible for the protection of such property from theft, and damage of any sort. To this end, the Contractor shall provide at no additional cost to the Owner all secured enclosures, security personnel, material inventory programs and any other means necessary for the protection of his property. The granting of rights of storage on Owner property shall in no way obligate the Owner for protection or replacement of loss of such stored property.

**4.12.03** Materials shall be so stored as to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. The Contractor shall coordinate the storage of all materials with the Architect/Engineer. Materials shall be stored on Owner property or in approved bonded warehouse(s). Unless otherwise shown on the Plans, the storage of materials and the location of the Contractor's plant and parked equipment or vehicles shall be as directed by the Architect/Engineer and/or the Field Representative.

**4.12.04** Unless otherwise specified or directed by the Architect/Engineer, all storage sites shall be restored to their original condition by the Contractor at no additional cost to the Owner.

#### **4.13 CONSTRUCTION SCHEDULES**

**4.13.01** The construction of this project will be planned and recorded with a conventional Critical Path Method (CPM) Format using a Computerized Project Planner Format (Primavera, Microsoft Project, etc.) as specified in Division 1 of the Project Manual. The Construction Schedules shall be used for coordination, monitoring, and payment of all work under the Contract including all activities of Subcontractors, vendors, and suppliers. The Contractor shall be solely responsible for the preparation, revisions and updating of the Construction Schedules.

**4.13.02** As a condition precedent to any progress payment, the Contractor shall update the Project Schedule, every month prior to submitting an application for payment, showing actual progress versus scheduled progress. The Owner, Architect and Consultants will review the updated Project Schedule to evaluate the progress of the Work and allocate responsibility, if the Project is behind schedule.

**4.13.03** If at any time the submitted product, in the opinion of the Owner, does not accurately reflect the critical path items or proper durations, does not exhibit proper float, or in any way does not represent an industry standard product, it will be rejected and transmitted back to the Contractor for corrections within two (2) working days at no additional cost to the Owner. No additional time to the Contract will be provided for corrections to the Project Schedule. The Owner reserves the right to require such information from the Contractor as may be necessary to determine the accuracy of the Project Schedule and any updates thereof. Failure to provide the monthly Project Schedule will preclude the Contractor from submitting a delay claim. The Contractor will indemnify the Owner from subordinate delay claims.



**4.13.04** Contractor shall prosecute the Work in accordance with the approved Project Schedule or most recently approved revision to the Project Schedule. In the event that progress along the critical path is delayed, the Contractor shall revise his planning to include additional forces, equipment, shifts or hours as necessary to meet the time or times of completion specified in this Contract and submit such plan to the Owner for review and approval. In addition, the Contractor shall revise the Project Schedule to reflect these recovery actions and submit it to the Owner for review and approval. Additional costs resulting from non-excusable delays will be borne by the Contractor. Delayed progress is defined as:

- (a) A delay in the start or finish of any activity on the critical path (critical path is defined as the path with the least amount of float) of the approved Project Schedule or most recently approved revision to the Schedule; or
- (b) A delay in the start or finish of any non-critical activity which consumes more than the available float shown on the approved Project Schedule or most recently approved revision to the Project Schedule, thereby making the activity critical and late; or
- (c) A projected completion date shown on a schedule update which is later than the contractual completion date; or
- (d) Any combination of the above.

**4.13.05** Unless the Architect/Engineer certifies that the revised Project Schedule accurately reflects the status of the Project, an amount equal to the Architect/Engineer's estimated cost to the Owner for obtaining a revised Project Schedule shall be deducted from the Monthly Requisition for Payment. The Contractor's failure to provide a conforming Project Schedule shall not relieve the Contractor from his responsibility to complete the project within the Contract requirements.

#### **4.14 SAFETY, FIRE PREVENTION, AND ENVIRONMENTAL CONSIDERATIONS**

**4.14.01** The Contractor shall comply with the rules and regulations of the Florida Department of Commerce regarding Industrial Safety under Section 440.56 Florida Statutes, Safety Rules Workers Compensation Laws and with United States Williams Steiger Occupational Safety and Health Act of 1970 commonly referred to as "OSHA", as applicable, and other national consensus standards of safety pertaining to particular trades.

**4.14.02** The Contractor shall not endanger, by cutting, digging, loading or otherwise, the structural integrity or overall safety of any structure, installation, facility, work in progress or work completed.

**4.14.03** Materials stored upon the Site or along the route of the work shall be so placed and the work shall be so conducted as to cause no obstruction to traffic other than as provided in these Contract Documents.

**4.14.04** The Contractor shall furnish and erect signs, barricades, lights, flags and other protective devices as may be required, to protect pedestrian and vehicular traffic and the work. All such signs, barricades, lights, flags and other protective devices shall be in accordance with the requirements of the Contract Documents.



- 4.14.05** The Contractor shall furnish flaggers in sufficient numbers to protect and divert vehicular and pedestrian traffic from working areas closed to or affecting traffic, or to protect any new work.
- 4.14.06** The Contractor and all Subcontractors shall be governed by the provisions of the Miami-Dade County, Florida, Fire Prevention and Safety Code, and shall take all necessary precautions to guard against and eliminate all possible fire hazards and to prevent injury to persons or fire damage to any construction, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private, particularly when gas or arc welding and torch cutting is taking place.
- 4.14.07** Contractor shall develop procedures for implementation and enforcement of the Safety Program at the Project Site, incorporate the Safety Program in Subcontracts, and oversee implementation of safety procedures.
- 4.14.08** Prior to commencement of the work, the Contractor shall provide a Safety Program and Safety Manual, which establish procedures for implementation and enforcement of safety in the Project, and is consistent with the Specifications for the approval of the Owner. Approval of the Safety Program and Safety Manual by the Owner does not constitute responsibility for its implementation.
- 4.14.09** In order to provide safety controls for protection to the life and health of employees and other persons, for prevention of damage to property, materials, supplies and equipment, and for avoidance of work interruptions in the performance of the Contract, the Contractor shall comply with all pertinent provisions of the Safety Manual and shall take or cause to be taken such additional measures as may be determined necessary for the purpose.
- 4.14.10** Prior to commencement of the work, the Contractor shall provide a Hurricane Plan, which establishes procedures for implementation and enforcement at times of Hurricane Watch and Warning for Owner approval. Approval of the Hurricane Plan by the Owner does not constitute responsibility for its implementation.
- 4.14.11 Environmental Considerations:**
- A. Air pollution: The Contractor shall use emissions control devices on gasoline or diesel powered construction equipment and minimize idling and unnecessary operation of equipment to prevent and control air pollution in accordance with criteria issued by Federal, State and local agencies having relevant jurisdiction.
  - B. Dust Control: The Contractor shall employ appropriate measures to control the generation and accumulation of dust at the site. Sprinkling with water or other suitable means shall be used to prevent the dispersal of substantial amounts of dust produced by the work. Collection and removal measures shall be employed to prevent accumulation of dust deposits.
  - C. Flammable Materials: The Contractor shall store petroleum products, paint and other flammable materials in designated locations and in compliance with fire safety regulations. Spillages shall be collected and legally disposed of promptly and in a manner consistent with fire safety regulations and environmental



protection regulations issued by Federal, State and local agencies having relevant jurisdiction.

- D. Noise Controls: The Contractor shall minimize noise caused by work operations. The Contractor shall provide machinery and equipment fitted with efficient noise-suppression devices for protection of employees and public and he shall schedule working hours and operations to minimize public disturbance in vicinity of work. The Contractor shall employ sound barriers as directed by the Architect/Engineer.
- E. Fumes: The Contractor shall not conduct operations that will result in the production of noxious, flammable, explosive or odoriferous fumes in locations or in quantities that constitute a hazard to health or safety or an objectionable environment for workers or public.

**4.14.12** Unless otherwise provided for in Division 1 or in the Technical Specifications, no additional payment will be made to the Contractor for signs, barricades, lights, flags, watch persons, flaggers, fire extinguishing apparatus and personnel, and other protective devices.

**4.14.13** Florida Trench Act: The Contractor and all his subcontractors performing trench excavation on this Contract shall comply with the Florida Trench Safety Act (Sections 553.60-553.64, Florida Statutes) and the Occupational Safety and Health Administrations' (OSHA) trench excavation safety standards, 29 C.F.R., s.1926.650, Subpart P, including all subsequent revisions or updates to these standards as adopted by the Department of Labor and Employment Security (DLES). The Contractor shall consider all available geotechnical information in his design of the trench excavation safety system. Inspections required by OSHA trench excavation safety standards shall be provided by the Contractor.

#### **4.15 AS-BUILT INFORMATION**

**4.15.01** A complete set of Contract Documents will be supplied to the Contractor for recording As-Built information. These Contract Documents shall be kept on the job site at all times and all changes marked in red as the work progresses. The Field Representative will coordinate the review of As-Built Drawings/Specifications at least weekly by the responsible architectural or engineering discipline(s). An As-Built Drawings/Specifications Review Log will be signed by each architectural or engineering discipline representative attesting to its review of the As-Built Drawings/Specifications. A copy of the log will be attached to the minutes of the Weekly Construction Meeting. The Field Representative shall report on the status of As-Built Drawings/Specifications at the Weekly Construction Meeting. Upon completion of the work and prior to approval of the Application for Final Payment, the complete set of As-Built Drawings/Specifications will be delivered to the Field Representative.

**4.15.02** Unless the Architect/Engineer certifies that the status of the As-Built Drawings/Specifications is current as of the date of the Contractor's Monthly Requisition for Payment, an amount equal to the Architect/Engineer's estimated cost to the Owner to make them current will be deducted from the Monthly Requisition for Payment. Certification by the Architect/Engineer of the current status does not certify that the information contained in the As-Built Drawings/Specifications is accurate.



**4.15.03** The Contractor shall provide complete and accurate As-Built information to the same degree of detail as the Contract Documents. Dimensioned features shall be re-dimensioned as necessary in As-Built submittals and unaltered design dimensions clearly verified. Work requiring survey layout will be recorded by submission of a Florida Registered Land Surveyor's certified survey.

**4.15.04** Incomplete or incorrect As-Built information shall constitute "faulty workmanship" subject to the remedies set forth in the Contract Documents including those provided under the Performance Bond.

**4.15.05** The Contractor shall submit, as a part of his monthly pay request, his certification that As-Built drawings/Specifications have been brought up to date as specified in this Article, that supplemental data, surveys, etc. have been recorded and that records are transmitted to the Architect/Engineer or available for review. The maintenance and updating of As-Built records shall constitute an essential step in the completion of the various items of work under the contract which shall be reflected in the payment to be made for such items of work.

#### **4.16 QUALITY OF WORK AND MATERIALS**

**4.16.01** The Contractor warrants to the Owner, and the Architect/Engineer that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that the work will be of good quality, free from faults and defects in materials and workmanship for a period of one year from the date of Substantial Completion, unless otherwise required under this Contract. Work not conforming to these standards may be considered defective. If required by the Architect/Engineer, Consultants, or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### **4.17 SIGNS**

**4.17.01** The Contractor will provide a construction sign as called for in the Contract Documents.

#### **4.18 EMERGENCIES**

**4.18.01** In an emergency affecting the safety of life, the work, or adjacent property, the Contractor shall notify the Field Representative as early as possible that an emergency exists. In the meantime, without special instruction from the Owner as to the manner of dealing with the emergency, the Contractor shall act at his own discretion to prevent such threatened loss or injury. As emergency work proceeds, the Field Representative may issue instructions, which the Contractor shall follow. The amount of time extension and/or compensation to which the Contractor may be entitled on account of emergency work will be determined in accordance with Section 7 herein.

**4.18.02** For purposes of this Article, an emergency is defined as an act or event that has already occurred, not caused by actions or inactions of the Contractor, which, if no



immediate action is taken may affect the safety of life, the work, or adjacent property. This article does not apply to steps taken by the Contractor to protect the work, adjacent structures, utilities, existing vegetation, or preparations the Contractor may make prior to storms or hurricanes or other acts of God.

#### **4.19 PAYMENT OF WAGE RATES AND BENEFITS**

- 4.19.01** The Contractor and each Subcontractor under him shall pay or cause to be paid, to all employees under them, the wages and benefits as reflected in the Wage and Benefits Schedules incorporated into the Bid Forms of these Contract Documents. The Contractor and each Subcontractor under him shall comply with all of the requirements of the Miami-Dade County Wage Rates and Benefits Requirements.

#### **4.20 USE OF COUNTY NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS**

- 4.20.01** The Owner reserves the right to review and approve any County-related copy prior to publication. The Contractor shall not allow the County-related copy to be published in Contractor's advertisement or public relations programs until submitting such copy and receiving prior approval from the Director.
- 4.20.02** The Contractor shall agree that published information on Miami-Dade County, and/or its Department of Cultural Affairs, shall be factual and in no way imply that the County endorses Contractor's firm, service or product. The Contractor shall insert the substance of this provision, including the preceding sentence, in each subcontract, supply contract, or purchase order.

### **ARTICLE 5 - SUBCONTRACTOR**

#### **5.1 ASSIGNMENT OF CONTRACT - SUBCONTRACTING PORTIONS OF THE WORK**

- 5.1.01** The Contractor shall not assign this Contract, nor any part thereof.
- 5.1.02** The Contractor will be permitted to subcontract portions of the work to competent Subcontractors. Such Subcontractors shall hold valid current certificate(s) of competency for the type of work to be performed, in accordance with the qualifications requirements as set forth in Chapter 489 of the Florida Statutes and Chapter 10 of the Code of Miami-Dade County.
- 5.1.03** Nothing contained herein shall create any contractual relationship between the Owner and any level of Subcontractor, of materialman or of supplier.
- 5.1.04** Acts and omissions of all of the Contractor's Subcontractors at any tier, their agents and employees, material suppliers, and consultants shall be the responsibility of the Contractor. The Contractor shall incorporate in each such subcontract all provisions, terms and conditions applicable to the Project that constitute obligations to be assumed and effected by him under the Contract Documents.



**5.1.05** All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor which shall contain provisions that:

- A. Preserve and protect the rights of the Owner, the Architect/Engineer, Consultants, and the Field Representative under the Contract with respect to the work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;
- B. Require that such work be performed in accordance with the requirements of the Contract Documents;
- C. Require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a part, in reasonable time to enable the Contractor to apply for payment;
- D. Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor or Supplier where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner; and
- E. Require specific consent to the provisions of the Contract Documents.

## **ARTICLE 6 - MISCELLANEOUS PROVISIONS**

### **6.1 METHODS OF SAMPLING AND TESTING**

**6.1.01** Sampling and testing of all materials shall be as set forth in the Contract Documents. Except for quality control testing and any other testing that may be the direct responsibility of the Contractor as set forth in the Contract Documents, the testing of samples and materials will be made at the expense of the Owner by the Project Testing Laboratory. The Contractor shall furnish the required samples without charge. The Contractor shall give sufficient notification to the Field Representative of the placing of orders for or receipt of materials to permit testing.

**6.1.02** The Field Representative may inspect, at its source, any specified material or assembly to be used in the work. Manufacturing plants may be inspected from time to time for the purpose of determining compliance with specified manufacturing methods or materials to be used in the work and to obtain samples required for its acceptance of the material or assembly. Should the Field Representative conduct plant inspections, the following shall exist:

- A. The Field Representative shall have the cooperation and assistance of the Contractor and the producer with whom he has contracted for materials.
- B. The Field Representative shall have full entry at all reasonable times to such parts of the plant that concern the manufacture or production of materials being furnished.
- C. If required by the Field Representative, the Contractor shall arrange for adequate office or working space that may be reasonably needed for conducting plant inspections. Office or working space should be conveniently located with respect to the plant.



**6.1.03** It is understood and agreed that the Owner shall have the right to retest any material which has been tested and approved at the source of supply after it has been delivered to the site. The Field Representative shall have the right to reject only material which, when retested, does not meet the requirements of the Contract Documents.

**6.1.04** All inspections and testing of materials, assemblies and equipment will be performed in Miami-Dade County. If the Contractor's material or manufacturing sources are such that inspections or tests cannot be made in Miami-Dade County, all traveling and lodging expenses in connections with such inspections and testing shall be borne by the Contractor.

## **6.2 INTERFERENCE WITH EXISTING UTILITIES**

**6.2.01** Attention of the Contractor is specifically directed to the need for careful control of all aspects of his work to prevent damage to cables, ducts, water mains, sewers, fire mains, telephone cables, and any other underground utilities and structures.

**6.2.02** Before commencing work in any given area, the Contractor shall carefully review the Plans, survey and search the site for utility locations, and determine possible utility conflicts. All known above and underground utilities, including, but not limited to, electrical, telephone, communications, lighting cables, fuel lines, sewer, drainage and water pipes, and other existing structures, etc., are shown on the Plans, but no guarantee is implied that the information is accurate. It shall be the responsibility of the Contractor to verify the location of all such utilities, structures, etc., using magnetic and electronic detectors and by hand excavation or other appropriate measures before performing any work that could result in damage to such utilities or structures. The Contractor shall, in conjunction with the Field Representative, make a thorough search of the particular location for underground utilities, structures, etc., whether or not shown on the drawings, before excavation work is commenced in any particular location. To this end the Contractor shall provide and maintain throughout the term of the Contract, electronic and magnetic detecting devices capable of locating underground utilities, etc. The Contractor shall, after locating primary and critical existing utilities, mark their location with indelible material or other means satisfactory to the Field Representative and maintain above ground physical identification during the work.

**6.2.03** During the construction of new structures, and other foundation work, conflicts may occur with existing underground utilities or structures. The Contractor shall call these conflicts to the attention of the Architect/Engineer and Field Representative, in writing, immediately. The Field Representative will issue instructions regarding a solution to the conflict. The Contractor shall be responsible for all methods, means, materials, and processes necessary to protect, repair, and restore all existing facilities, property, structures, equipment or finishes damaged in any manner through its negligence during execution of the work.

**6.2.04** In the event of damage to, or accidental disruption of utilities or other facilities as a result of the Contractor's operations, the Contractor shall take immediate steps to repair or replace all damage and to restore all services. Further, the Contractor shall engage any additional outside services which may be necessary to prosecute repairs on a continuous "around the clock" basis until services are restored. The Contractor shall also provide and operate any supplemental temporary services to maintain uninterrupted use of the facilities. All costs involved in making repairs and restoring disrupted service resulting from the Contractor's work shall be borne by the Contractor and the Contractor shall be fully responsible for any and all claims resulting from the damage.



### **6.3 TEMPORARY UTILITIES, DRAINAGE, ETC.**

- 6.3.01** Any temporary utilities, drainage, etc., which may be required to maintain operations of the Owner's or County's facilities, other affected facilities, or the Work in progress during the construction period, shall be furnished, installed and maintained by the Contractor. No such utilities, drainage, etc., shall be installed or operated without the prior approval of the Field Representative. At the completion of the Work, all temporary utilities, drainage, etc., shall be removed.
- 6.3.02** All fees, charges, and cost for labor and materials, including the furnishing of temporary equipment and the connection(s) thereof, required for the maintenance of temporary utility services in lieu of existing utilities services disrupted by the work shall be furnished by the Contractor at his expense, except where otherwise specified. When such temporary services are no longer required, the Contractor shall remove all temporary equipment and connections and leave the facilities and existing permanent apparatus in as good condition as existed prior to making such temporary connections.
- 6.3.03** The Contractor shall furnish temporary heat or air-conditioning wherever required to prevent injury to work and materials through dampness and cold. Use of open salamanders or any temporary heating devices which may be fire hazards or may cause smoke damage to finished work will not be permitted. Minimum and maximum temperature requirements specified for various materials shall be strictly observed by the Contractor.
- 6.3.04** Unless otherwise specified in the Contract Documents, the Contractor shall provide all utility services (e.g. telephone, power, lighting, water, sewer), necessary for the performance of its work, in accordance with the requirements of Division 1 of the Project Manual.

### **6.4 PERMITS, LAWS, TAXES, ROYALTIES AND REGULATIONS**

- 6.4.01** The Contractor shall apply for and procure all permits, certificates, inspections and licenses, pay all charges, taxes, royalties and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work, except that the Contractor will be reimbursed by the Owner for the actual costs of permit fees including the Planning, Development, and Regulation Permit Fees, DERM, WASA, EPA, DEP, SFWMD and USACE Permit Fees, License Fees, Impact Fees, and Inspection Fees paid to any governmental entity in connection with the construction of the project; reimbursement will be made from funds available under the General Allowance Account or, at the Owner's option, the reimbursement will be made directly from other Owner's funds.
- 6.4.02** The Owner will not pay or reimburse the Contractor for any penalty(ies) relating to permits or fees as a result of the Contractor's failure to timely obtain all permits, inspections, approvals, etc.
- 6.4.03** The Contractor shall observe and comply with all applicable Federal, State, County and other laws, codes, ordinances, rules and regulations of the Federal, State and County



governments, and any and all programs developed in compliance therewith, in any manner affecting the conduct of the Work.

- 6.4.04** The Contractor shall coordinate any necessary inspections as may be required by the Threshold Inspector and provide the Threshold Inspector, in a timely manner, with updated and approved Construction Documents, including but not limited to shop drawings (reinforcing, formwork, shoring and re-shoring, precast structural components, etc.), sketches and correspondences that may affect the Threshold Inspector's work.
- 6.4.05** Dewatering of excavation shall be performed in accordance with the applicable provisions of DERM, Florida DEP, and SFWMD Dewatering Permits and the requirements of Division 1 of the Project Manual.
- 6.4.06** All construction activities shall be subject to the pollution prevention requirements established under the National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act regulating storm water discharges from construction sites.
- 6.4.07** If the Contractor is required or desires to use any design, device, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the surety shall indemnify and save harmless the Owner, the County, and the Field Representative from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Owner for any costs, expenses, and damages which it may be obliged to pay by reason of an infringement, at any time during the prosecution or after the completion of the work.
- 6.4.08** Unless otherwise specified in this subsection, the Contractor is advised that the site of the work is not within any property, district, or site, and does not contain any building, structure, or object listed in the current National Register of Historic Places published by the United States Department of Interior.
- 6.4.09** Should the Contractor encounter, during its operations, any building, part of a building, structure, or object that is incongruous with its surroundings, he shall immediately cease operations in that location and notify the Field Representative. The Field Representative will immediately investigate the Contractor's finding and will direct the Contractor to either resume its operations or to suspend operations as directed.
- 6.4.10** Should the Field Representative order suspension of the Contractor's operations in order to protect an archaeological or historical finding, or order the Contractor to perform extra work, such extra work shall be covered by an appropriate Work Order or Change Order. If appropriate, the delay shall be considered a Compensable Excusable Delay.
- 6.4.11** Upon completion of all of the work contemplated under the Contract Documents, the Contractor shall obtain and deliver to the Field Representative such Certificate(s) of Occupancy or Certificate of Completion as required by the Florida Building Code.
- 6.4.12** The Contractor shall be subject to and comply with all the provisions of Miami-Dade County Code Sections 2-8.4.1 and 10-38. A breach of the clauses contained in the contract adversely affecting the performance of the Contractor on this project may be grounds for the initiation of debarment proceedings.



**6.4.13** The Owner may, at its option, issue the Contractor Authorization to Pull a Planning, Development, and Regulation Permit prior to the Notice to Proceed. Authorization to Pull a Planning, Development, and Regulation Permit is not a Notice to Proceed.

## **6.5 AUDIT RIGHTS AND REVIEW OF RECORDS**

**6.5.01** The Contractor shall, during the term of this Contract and for a period of five years thereafter, allow the Owner and its duly authorized representatives to inspect all payroll records, invoices for materials, books of account, project correspondence and project-related files and all relevant records pertinent to the Contract.

**6.5.02** The Owner retains the right to audit accounts and access all files, correspondence and documents in reference to all work performed under this Contract. The Owner shall be provided full access upon request to all documents, including those in possession of Subcontractors or suppliers during the work and for a period of five years after the completion of the Work. In case of any litigation regarding this project, such rights shall extend until final settlement of such litigation. Failure to allow the Owner access shall be deemed a waiver of Contractor's claims.

**6.5.03** The Contractor shall maintain a banking account within Miami-Dade County for all payments to laborers, Subcontractors and vendors furnishing labor and materials under this Contract. All records shall be maintained in Miami-Dade County for the term of this Contract.

**6.5.04** Pursuant to Miami-Dade County Code Section 2-1076(6) and County Administrative Order No. 3-20, audit accounts have been established as part of this Contract to pay for the services and administrative requirements of the County's Inspector General and for Independent Private Sector Inspector General (IPSIG) services, respectively. The amount of these audit accounts is shown in the Bid Form. The Contractor shall have no entitlement to any of these funds contained in the Inspector General or the IPSIG audit accounts. The Owner retains all rights to these funds, may expend these funds at its sole discretion, and any funds not expended from these audit accounts remain the property of the Owner.

**6.5.05** Pursuant to Miami-Dade County Code Section 2-1076(6), Miami-Dade County has established the Office of Inspector General which may perform audits on any County contract throughout the duration of each contract, and may perform reviews and investigations, and require the production of records, and other functions as provided in the ordinance. The cost of the administration of these services by the Office of Inspector General shall be  $\frac{1}{4}$  of 1% of the base contract amount, which cost the Contractor/Vendor/Consultant agrees is included in the total contract amount for the sole convenience of the County. This administrative cost will be retained by the County for this purpose from the total contract amount. This administrative cost shall also be included in all change orders to this contract and all contract renewals and extensions. Accordingly, this administrative cost will be retained by the County for this purpose from all change orders, contract renewals and extensions.

**6.5.06** The Miami-Dade Office of Inspector General is authorized and empowered to review past, present and proposed programs, contracts, transactions, accounts, records and



programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to retain the services of independent private sector inspectors general to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Contractor/Vendor/Consultant, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

**6.5.07** The Inspector General shall have the right to inspect and copy all documents and records in the Contractor/Vendor/Consultant's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

**6.5.08** The provisions in this section shall apply to the Contractor/Vendor/Consultant, its officers, agents, employees, subcontractors and suppliers. The Contractor/Vendor/Consultant shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Contractor/Vendor/Consultant in connection with the performance of this contract.

**6.5.09** Nothing in this section shall impair any independent right to the County to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the County by the Contractor/Vendor/Consultant or third parties.

## **6.6 GOVERNING LAWS**

**6.6.01** The Contractor shall, during the term of this Contract, be governed by the statutes, regulatory orders, ordinances and procedures of the United States of America, the State of Florida and of Miami-Dade County.

## **6.7 SUCCESSORS AND ASSIGNS**

**6.7.01** The Owner and the Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due the Contractor hereunder, without the previous written notice of the Owner.



## **6.8 WRITTEN NOTICE**

- 6.8.01** Written notice to the Contractor shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to any officer of the corporation for whom it was intended or if delivered at or sent by registered or certified mail to the last business address known to those who give the notice.
- 6.8.02** Written notice to the Owner shall be deemed to have been duly served if delivered in person, delivered at or sent by registered or certified mail to the Director of the Miami-Dade County Department of Cultural Affairs, 111 NW 1<sup>st</sup> Street, Suite 625, Miami, FL 33128.

## **6.9 NON-DISCRIMINATION - EQUAL EMPLOYMENT OPPORTUNITY**

- 6.9.01** The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post notices setting forth the provisions of this nondiscrimination clause in conspicuous places, available to employees and applicants for employment.
- 6.9.02** The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
- 6.9.03** The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 6.9.04** The Contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended and with the rules, regulations and relevant orders of the Secretary of Labor.
- 6.9.05** The Contractor shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended and the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records and accounts by the County, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.



**6.9.06** In the event of the Contractor's non-compliance with the non-discrimination clauses of this Contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, as amended or by rules, regulations or orders of the Secretary of Labor, or as otherwise provided by law.

**6.9.07** The Contractor shall include the provision of Paragraphs 6.12.01 through 6.12.08 in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended so that such provisions will be binding upon each Subcontractor or Vendor. The Contractor shall take such action with respect to any Subcontract or purchase order as the United States may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the United States, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **6.10 NON-DISCRIMINATION - EMPLOYMENT**

**6.10.01** The Contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, race, color, religion, national origin, ancestry or disability.

**6.10.02** The Contractor shall comply with applicable provisions of the Americans with Disabilities Act, including, but not limited to, provisions pertaining to employment.

**6.10.03** The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, color, religion, sex, national origin, ancestry or disability.

**6.10.04** The Contractor shall include the provision of the above articles in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor so that such provisions will be binding upon each Subcontractor or Vendor.

## **ARTICLE 7 – CHANGES/SUBSTITUTIONS**

### **7.1 CHANGES IN THE WORK**

**7.1.01** All contractor request for substitution shall be submitted during the bid period or as specified in the Advertisement for Bids. No request for substitution from the Contractor will be considered during the construction period. No request for substitution will be considered unless accompanied by complete information and descriptive data necessary to determine the quality of the proposed materials, articles or equipment. Samples shall



be provided when requested by the Architect/Engineer. The burden of proof as to the comparative quality or suitability of the proposed materials, articles or equipment shall be upon the Contractor. The Architect/Engineer's and the Owner's decision in such matters shall be final. In the event that the Architect/Engineer rejects the use of such substitute materials, articles or equipment, then one of the particular products designated by brand name shall be provided.

Note: If any mechanical, electrical, structural, or other changes are required for the proper installation and fit of alternative materials, articles, or equipment, or because of deviations from the Contract Documents, such changes shall be shown in the substitution request and such changes shall be made without additional cost to the Owner.

**7.1.02** The Owner reserves the right to delete work from this Contract, to add work to this Contract, and to change work to be accomplished under this Contract without invalidating the Contract. In the event the Owner exercises its right to change, delete or add work under the Contract, such work will be ordered and paid for as provided for in the Contract Documents.

**7.1.03** Changes in the work may be initiated by the issuance of a Bulletin by the Architect/Engineer. The Contractor shall submit a price quote to the Architect/Engineer and the Owner for their review, within 21 calendar days of receipt of a Bulletin. The Contractor shall maintain this price, for acceptance by the Owner, for a minimum of 90 calendar days after submittal. The cost or credit to the Owner for any change in the work shall be determined in accordance with the provisions of the Contract Documents. The Contractor shall not be compensated for effort expended in preparing and submitting price quotes.

**7.1.04** Changes in the work covered by Unit Prices, as stated in the Contract Documents shall be all inclusive. These prices will include all Direct and Indirect Costs, remobilization and demobilization associated with the change, means and methods of execution, engineering and any associated work necessary. To be compensable, units must be measured daily by the Contractor and approved in writing by the Architect/Engineer.

## **7.2 ALLOWANCE ACCOUNT**

**7.2.01** Certain portions of work which may be required to be performed by the Contractor under this Contract are unforeseeable, and the value of such work, if any, is included in the Contract as a specific line item(s) entitled 'Allowance Account(s).'

A. The Allowance Account may be used at the Owner's discretion to reimburse the Contractor for the actual costs for furnishing all labor, materials, equipment and services necessary for modifications or extra work required to complete the Project because of unforeseeable conditions; for performing minor construction changes required to resolve: oversight in design, Owner oversight, unforeseen conditions, revised regulations, technological and product development, operational changes, schedule requirements, program interface, emergencies and delays.

B. Other Allowance Account(s) may be used as specified in the Contract Documents.

These values, if any, are to be included in the Total Contract Amount, but are not chargeable against the Total Contract Amount unless and until the Contractor is directed



to perform work contemplated in the Allowance Account(s) by a written Work Order(s) issued by the Architect/Engineer and authorized by the Owner.

- 7.2.02** At such time as work is to be performed under the Allowance Account(s), if any, the work shall be incorporated into the Construction Schedule and the Schedule of Values, without additional charge to the Owner, and shall in all respects be integrated into the construction as a part of the Contract as awarded.
- 7.2.03** The Work Order for the required work will be issued by the Architect/Engineer upon receipt from the Contractor of a satisfactory proposal for performance of the work, and the acceptance thereof by the Architect/Engineer and the Owner. If the nature of the work is such that a Unit Price or Lump Sum price is not economically practical, the Work Order may be issued to perform the work on a Cost Plus Basis.
- 7.2.04** The Contractor shall solicit not less than three (3) competitive bids from appropriate subcontractors and materials suppliers when so directed by the Architect/Engineer, for performance of the work in accordance with such Plans and Specifications as may be required and as may be furnished by the Architect/Engineer. The Contractor shall submit the solicited bids to the Architect/Engineer and Owner for approval or rejection. If the bids are rejected by the Architect/Engineer and/or Owner, the Contractor shall solicit additional bids for submittal.
- 7.2.05** No Work Orders shall be issued against an Allowance Account if such Work Orders in the aggregate exceed the authorized amount of that Allowance Account, provided however that such excess may be authorized by appropriate Change Order.
- 7.2.06** Work Orders will be issued for a defined scope, time impact if any, and agreed-upon cost; and Contractor shall accept the Work Order amount as full accord and satisfaction of all time and monies due him in connection with the work performed under the Allowance Account. In consideration of and conditional upon payment to Contractor by the Owner of the Work Order amount, the Contractor releases County, its officers, employees and agents from, and waives and relinquishes, any and all claims, disputes or causes of action it has or may have against the County, its officers, employees and agents for all events arising out of or in connection with the Work Order.
- 7.2.07** At Final Acceptance, the Contract Price shall be decreased to reflect unexpended amounts under the Allowance Accounts.

### **7.3 DELETION OR ADDITION OF WORK**

- 7.3.01** All final measurement for unit price work shall be performed by the Architect/Engineer who shall afford the Contractor an opportunity to witness or to participate in the measurements and to review all calculations relating to final measurement.
- 7.3.02** In the event the Owner exercises its right to delete any portion(s) of the work contemplated herein, such deletion will be ordered and the Contract Total Amount and Time will be adjusted as provided for in these Contract Documents by Change Order or by Work Order, as appropriate.

**A. Deleted Work - Lump Sum Item(s)**

The Contractor shall credit the Owner for the reasonable value of the deleted work determined from the approved Schedule of Values, subject to approval by the



Architect/Engineer. If the reasonable value of the deleted work cannot be readily ascertained from the Schedule of Values submitted in accordance with these General Conditions, or if requested by the Architect/Engineer, the Contractor shall supply all data required by the Architect/Engineer to substantiate the amount of the credit to be given the Owner.

**B. Deleted Work - Major Unit Price Item(s)**

- 1) If 100% of the work under any major unit price item is deleted, then the Contractor will not receive any payment for the value of the deleted work.
- 2) If a quantity not greater than 25% of the work under a major unit price item is deleted, the Contractor shall be paid only for the quantity of such items completed times the Contract Unit Price.
- 3) If less than 100%, but more than 25% of the work under any major unit price item is deleted, then the Contractor and the Owner may negotiate a new equitable unit price for such item and the Contractor shall be paid for the actual quantity of such item of work performed at such negotiated unit price. If the Owner and the Contractor cannot reach agreement for an equitable Unit Price, for any item, then the entire work shall be performed as Work not covered by Unit Prices.

**C. Deleted Work - Minor Unit Price Item(s)**

If work under any minor unit price item is deleted, then the Contractor shall be paid only for the quantity of the work completed times the original Contract Unit Price. The Contractor shall not be entitled to any additional compensation if actual quantities of work performed are less than the estimated quantities shown on the Schedule of Prices Bid in the Bid Form.

**7.3.03** The Contractor shall be reimbursed for any actual reasonable expenses incurred prior to the notice of deletion of work as a result of preparing to perform the work deleted. The Contractor shall submit to the Architect/Engineer all data required to substantiate the amount of compensation requested therefore. In no event shall the Contractor be entitled to compensation greater than the aggregate amount of the Unit Price times the original bid quantity of Work shown on the Schedule of Prices Bid in the Bid Form.

**7.3.04** No payment(s) shall be made to the Contractor by the Owner for loss of anticipated profit(s) from any deleted work.

**7.3.05** In the event the Owner exercises its right to add to any portion of the work contemplated herein, such addition will be ordered and the Contract Total Amount and Contract Time will be adjusted as provided for in these Contract Documents, by Change Order or by Work Order as appropriate. In the event of a dispute between Owner and Contractor as to the adjustment to the Amount or the Time, the dispute shall be handled in accordance with Article 8 of these General Conditions.

**A. Additional Major Unit Price Work**

- (1) If any additional unit price work is ordered which does not change the original Contract quantity of any major unit price item(s) by more than 25%, the Contractor shall perform the work as ordered and shall be paid for the actual quantity of such item of work performed at the appropriate original Contract Unit Price.



- (2) If additional unit price work is ordered which changes the original Contract quantity of any major unit price item by more than 25%, then the Owner and the Contractor shall negotiate a new equitable unit price for such item, and the Contractor shall be paid for the actual quantity of such item of work performed at such negotiated unit price.
- (3) If the Owner and the Contractor cannot reach agreement on an equitable Unit Price for any such item, then the entire work to be performed under such item shall be paid as Extra Work not Covered by Contract Prices as specified in 7.4.

**B. Additional Minor Unit Price Work**

If additional unit price work is ordered under any minor unit price item(s), then the Contractor shall perform the work as directed and shall be paid for the actual quantity of such item(s) of work performed at the appropriate original Contract Unit Price(s).

**7.3.06** Work Orders and Change Orders will be issued for a defined scope, time impact if any, and agreed-upon cost; and Contractor shall accept the Work Order or Change Order amount as full accord and satisfaction of all time and monies due him in connection with the work performed under such Work Order or Change Order. In consideration of and conditional upon payment to Contractor by the Owner of the Work Order or Change Order amount, the Contractor releases County, its officers, employees and agents from, and waives and relinquishes, any and all claims, disputes or causes of action it has or may have against the County, its officers, employees and agents for all events arising out of or in connection with the Work Order or Change Order.

**7.3.07** All trade discounts, rebates, refunds, and all returns from sale of surplus materials and equipment shall accrue to the Owner and shall be credited to the Cost of the Work. All penalties incurred due to any fault of the Contractor shall not be paid or reimbursed to the Contractor by the Owner and shall be borne solely by the Contractor.

**7.4 EXTRA WORK NOT COVERED BY CONTRACT PRICES**

**7.4.01** All additional work ordered, work changed or deleted shall be authorized by Work Order(s) or Change Order(s). All changed or added work so authorized shall be performed by the Contractor at the time and in the manner specified.

**7.4.02** If work is ordered, changed, or deleted which is not covered by Unit Prices, then the Owner and the Contractor shall negotiate an equitable adjustment to the Contract Price for the Direct and Indirect Costs for the performance of such work. Direct Costs, as described in Article 1, are limited to site labor costs, permanent materials costs and Special Equipment Costs. Indirect Costs for Work ordered, changed or deleted may be reimbursed for Excusable and Compensable Delay as defined in these Contract Documents.



**7.4.03** In order to reimburse the Contractor for additional Direct Costs, either by Work Order, Change Order or any other means, the Contractor must have additional work added to the Contract Scope of Work. The additional cost of idle or inefficient labor, from any cause, or the additional cost of labor made idle or inefficient from any cause will not be considered a reimbursable additional Direct Cost. Special Equipment or Machinery, which is made idle or inefficient by the Work ordered, changed or deleted, may be reimbursable if approved by the Architect/Engineer as an unavoidable cost to the Contractor, caused by the Owner.

**7.4.04** Costs of Special Equipment or Machinery, not already mobilized on the project site, approved by the Architect/Engineer, shall be calculated using the current issue of the AED Manual plus any required mobilization. The selection of which of the AED rates (daily, weekly, monthly) to be used to calculate these costs shall be as follows:

Between one day and seven days, use the daily rate.

Between seven days and thirty days, use the weekly rate.

Greater than thirty days, use the monthly rate.

For less than one day hourly rates use the daily rate divided by 8.

For overtime hourly rates use the daily rate divided by 8, the weekly rate divided by 40, or the monthly rate divided by 176 as appropriate.

Costs for Special Equipment and Machinery already mobilized on the project site, shall not exceed the monthly rate stated in the AED Manual, divided by 176, per hour that the Special Equipment and Machinery is in use on the work plus any required re-mobilization.

The cost calculation shall not combine rates within the range of a time extension. It shall use decimals of the time extension rate that the extension falls under. For example, the cost calculation for a piece of Special Equipment with an approved delay of forty five days shall be 1.5 months times the monthly rate, not one month at the monthly rate, plus two weeks at the weekly rate, plus one day at the daily rate.

**7.4.05** If the Owner and the Contractor cannot reach agreement on an equitable adjustment to the Contract Price as prescribed above or cannot reach agreement on an equitable adjustment to the Contract Price for work not covered by Unit Price Items, or cannot reach an agreement on an equitable Unit Price for Additional Major Unit Price work as specified above, then the extra work will be performed on a force account basis as directed by the Architect/Engineer and paid for as specified below.

**7.4.06** The following percentages will be allowed as mark-ups over Direct Costs for all negotiated adjustments to the Contract Amount or for work performed on either a negotiated lump sum basis or a force account basis (time and materials work):

**A. Extra Work Performed by Contractor's Own Forces**

The Contractor shall be paid 15% times the actual Direct Cost as direct compensation for Indirect Costs including Overhead, profit and all other costs associated with the work.

**B. Extra Work Performed by a Subcontractor or any Subtier Subcontractor**

The Contractor shall be paid 25% times the Subcontractor's or subtier Subcontractor's actual Direct Cost as direct compensation for the Contractor and Subcontractors' Indirect Costs including Overhead, profit and all other costs associated with the Work at all tiers.



**C. Extra Work Involving Compensable Time Extensions**

If a compensable time extension is approved, the Contractor will be paid the daily rate stipulated in the Bid Form.

**7.4.07** In the event extra work is performed on a force account basis, then the Contractor and the Subcontractor(s), as appropriate, shall maintain itemized daily records of costs, quantities, labor and the use of authorized Special Equipment or Machinery. Copies of such records, maintained as follows, shall be furnished to the Architect/Engineer and the Owner daily for approval, subject to audit.

- A. Comparison of Record.** The Contractor, including his Subcontractor(s) of any tier performing the work, and the Architect/Engineer shall compare records of the cost of force account work at the end of each day. Agreement shall be indicated by signature of the Contractor, the Subcontractor performing the work, the Architect/Engineer, and the Owner, or their duly authorized representatives.
- B. Statement.** No payment will be made for work performed on a force account basis until the Contractor has furnished the Architect/Engineer and the Owner with duplicate itemized statements of the cost of such force account work detailed as follows:

- (1) Name, classification, date, daily hours, total hours, rate and extension for each laborer, tradesman, and foreman.
- (2) Designation, dates, daily hours, total hours, rental rate, and extension of each unit of special machinery and equipment.
- (3) Quantities of materials, prices, and extensions.
- (4) Transportation of materials.

The statements shall be accompanied and supported by a receipted invoice of all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such materials were taken from its stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

**C. Authorization of Special Equipment and Machinery**

No compensation for Special Equipment or Machinery shall be made without written authorization from the Architect/Engineer. The Architect/Engineer shall review and evaluate any Special Equipment or Machinery proposed by the Contractor for use on a force account basis. As part of its evaluation, the Architect/Engineer shall determine whether any of the Special Equipment or Machinery being proposed by the Contractor will be concurrently used on the Project, including approved changes, or on other force account work on the Project. If the Architect/Engineer determines that such a concurrent use of Special Equipment or Machinery is being proposed by the Contractor, prior to the authorization of such Special Equipment or Machinery, the Architect/Engineer and thereto Contractor shall establish a straight-line prorated billing mechanism based on the actual percentage of time that the equipment or machinery is required to be used on the force account work(s).

Special Equipment or Machinery which is approved for use by the Architect/Engineer shall be reviewed and accounted for on a daily basis as provided in the Comparison of Record and Statement paragraphs of this Section of the Contract.



**7.4.08** Increases to the Contract Amount shall be authorized by a Change Order executed by the Contractor, the Contractor's Surety and the Owner. Decreases to the Contract amount shall be by Change Order or Work Order as determined by the Owner.

**7.4.09** Any claim for payment of Extra Work that is not covered by a Change Order or Work Order will be rejected by the Owner.

## **7.5 NON-EXCUSABLE AND EXCUSABLE DELAYS**

**7.5.01** A Non-Excusable Delay is any delay which extends the completion of the work or portion of the work beyond the Contract Time and which is caused by the act, fault or omission of the Contractor or any Subcontractor, materialman, supplier or vendor to the Contractor. Delays in obtaining permits caused by the Contractor's actions or lack of actions are Non-Excusable Delays. A Non-Excusable Delay shall not be cause for granting a Contract Time extension and shall subject the Contractor to liquidated damages.

**7.5.02** An Excusable Delay is any delay which extends the completion of the work and which is caused by circumstances beyond the control of the Contractor or its Subcontractors, materialmen, suppliers or vendors. The Contractor may be entitled to a Contract Time extension for each day the work is delayed beyond the Contract Time due to an Excusable Delay.

**7.5.03** The Contractor shall document its claim for any time extension in accordance with the requirements of Article 8 "CLAIMS FOR ADDITIONAL COMPENSATION" of these General Conditions. Failure of the Contractor to comply with all requirements as to any particular event of Project delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of Project delay.

**7.5.04** An Excusable Delay may be Compensable or Non-Compensable. The Contractor shall be entitled to Liquidated Indirect Costs for Compensable Excusable Delay, in accordance with the Contract Documents.

**7.5.05** An Excusable Delay is Compensable when:

- A. The delay causes the work to extend beyond the Contract Time, and
- B. The delay is caused by circumstances beyond the control of the Contractor or its Subcontractors, materialmen, suppliers or vendors, and
- C. The delay is caused by an act or omission of the Owner, or of the Architect/Engineer, provided however, delays caused by permitting agencies, whether or not part of Miami-Dade County, are non-compensable excusable delays to the extent that such delays were not caused by the Contractor; permitting delays caused by the Contractor are non-excusable delays.

**7.5.06** An Excusable Delay is Non-Compensable when:

- A. It is caused by circumstances beyond the control of the Contractor, its Subcontractors, materialmen, suppliers and vendors, and is also caused by circumstances beyond the control of the Owner, the Architect/Engineer, and/or the Consultants such as delay(s) caused by the permitting agencies, whether or not part



of Miami-Dade County, to the extent that such delays were not caused by the Contractor, or

- B. It is caused jointly or concurrently by the Contractor or its subcontractors, materialmen, suppliers or vendors and by the Owner, the Architect/Engineer, and/or Consultants, then the Contractor shall be entitled only to a time extension and no further compensation for the delay, or
- C. The delay does not cause the Work to extend beyond the Contract Time.

**7.5.07** Weather may be grounds for Non-Compensable Excusable Delay if the inclement weather is unusually frequent or unusually severe, occurs when no inside work is being performed, and delays the completion of the Work.

**7.5.08** In no event shall the Contractor be compensated for interim delays which do not extend the Contract Time.

**7.5.09** In no event shall Contractor be compensated for delays except for delays exceeding the Contract Time stipulated in the Bid Forms.



## **7.6 LIQUIDATED DAMAGES AND LIQUIDATED INDIRECT COSTS**

- 7.6.01** The parties to the Contract agree that time, in the completion of the work, is of the essence. The Owner and the Contractor recognize and agree that the precise amount of actual damages for delay in the performance and completion of the work is impossible to determine as of the date of execution of the Contract and that proof of the precise amount will be difficult. Therefore, the Contractor shall be assessed Liquidated Damages on a daily basis for each Day the Contract Time is exceeded due to a Non-Excusable Delay. These Liquidated Damages shall be assessed, not as a penalty, but as compensation to the Owner for expenses which are difficult to quantify with any certainty and which were incurred by the Owner due to the delay. The amount of liquidated damages assessed shall be an amount, as stipulated in the Bid Form, per day for each calendar day which the Project is delayed due to a Non-Excusable Delay.
- 7.6.02** The Owner and the Contractor recognize and agree that the precise amount of the Contractor's Indirect Costs for delay in the performance and completion of the Work is impossible to determine as of the date of execution of the Contract, and that proof of the precise amount will be difficult. Therefore, Liquidated Indirect Costs recoverable by the Contractor shall be assessed on a daily basis for each Day the Contract Time is delayed due to Compensable Delay. These Liquidated Indirect Costs shall be paid to compensate the Contractor for all indirect expenses caused by the Compensable Excusable Delay and shall include, but not be limited to, all profit, interest, home office overhead, field office overhead, acceleration, loss of earnings, loss of productivity, loss of bonding capacity, loss of opportunity and all other indirect costs incurred by Contractor or its subcontractors, materialmen, suppliers and vendors. The amount of liquidated Indirect Costs recoverable shall be an amount, as stipulated in the Bid Form, per day for each day the Contract is delayed due to Compensable Excusable Delay.
- 7.6.03** In the event the Contractor fails to perform any other covenant or condition of this Contract relating to the Work, the Contractor shall become liable to the Owner for any actual damages which the Owner may sustain as a result of such failure on the part of the Contractor.
- 7.6.04** Nothing in this Article shall be construed as limiting the right of the Owner to terminate the Contract, to require the Surety to complete said Project, and to claim damages for the failure of the Contractor to abide by each and every one of the terms of this Contract as set forth and provided for in the Contract Documents.

## **7.7 TEMPORARY SUSPENSION OF WORK**

- 7.7.01** The Architect/Engineer shall have the authority to suspend the work wholly, or in part, for such period or periods as may be deemed necessary, because of unsuitable weather, for failure of surety, or other conditions unfavorable for the prosecution of the work, or for failure on the part of the Contractor to carry out the instructions of the Architect/Engineer as provided for in the Contract Documents.
- 7.7.02** If it should become necessary to suspend the work for an indefinite period, the Contractor shall store all materials in such a manner that they will not become an obstruction, nor become damaged in any way, and it shall take every precaution to prevent damage or deterioration of the work performed. The Contractor shall construct temporary structures where necessary to provide for traffic on, to, or from the project site.



- 7.7.03** The Contractor shall not suspend the work without written order from the Architect/Engineer.
- 7.7.04** In the event that the Contractor is ordered by the Architect/Engineer, in writing, to suspend work for some unforeseen cause not otherwise provided for in the Contract Documents and over which the Contractor, his Subcontractors, Suppliers or Materialmen have no control, the period of such shutdown, if it causes delay in the completion time, may be considered Compensable Excusable delay as provided elsewhere in the Contract Documents. The period of shutdown shall be computed from the effective date of the Architect/Engineer's order to suspend work to the effective date of the Architect/Engineer's order to resume the work. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, for suspensions made at the request of the Contractor, or for any other delay provided for in the Contract Documents.
- 7.7.05** Nothing in this Contract shall be construed as entitling the Contractor to compensation for delays due to failure of Surety, suspensions ordered as a result of the Contractor's nonconformance with the Contract Documents, as a result of the Contractor's failure to carry out the instructions of the Architect/Engineer or for any other delays not specifically deemed to be Compensable Excusable Delay, as provided for elsewhere in the Contract Documents.

## **ARTICLE 8 - CLAIMS FOR ADDITIONAL COMPENSATION**

### **8.1 CLAIMS AND DAMAGES**

- 8.1.01** Should the Contractor suffer injury or damage to person or property because of any act or omission of Owner or of any of its employees, agents or others for whose acts the Owner is legally liable, a claim shall be made in writing to the Owner within 10 days after the first observance of such injury or damage.
- 8.1.02** Each claim must be certified, and accompanied by a certified final bid tabulation in accordance with Miami-Dade County Code Section 2-265.
- 8.1.03** No claims for additional compensation, time extension or for any other relief under the Contract shall be recognized, processed, or treated in any manner unless the same is presented in accordance with this Article. Failure to present and process any claim in accordance with this Article shall be conclusively deemed a waiver, abandonment or relinquishment of any such claim, it being expressly understood and agreed that the timely presentation of claims, in sufficient detail to allow proper investigation and prompt resolution thereof, is essential to the administration of this Contract.
- 8.1.04** Each and every claim shall be made in writing and delivered to the Field Representative as soon as reasonably practicable after the event, occurrence or non-occurrence which gives rise to such claim, however, in no event later than 10 days after the event or occurrence, or in the case of non-occurrence, within 10 days after the time when performance should have occurred. Verbal, telephone or facsimile notice shall be given in those instances where delay in presenting the claim would result in the conditions causing the claim to change, thereby requiring an immediate need to examine the job

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site or other conditions to ascertain the nature of the claim before the condition(s) disappear or become unobservable. Any such oral or facsimile notice shall be followed, at the earliest practicable time, but in no event more than 10 days after the event causing the claim, by written confirmation of the claim information.

**8.1.05 Each and every claim shall state:**

- A. The date of the event or occurrence giving rise to the claim. In the case of a claim arising from a claimed nonperformance, the date when it is claimed that performance should have occurred shall be stated.
- B. The exact nature of the claim, including sufficient detail to identify the basis for the claim, including by way of example only, such detail as drawing numbers, specification sections, job site location, affected trades, contract clauses relied upon, schedule references, correspondence or any other details reasonably necessary to state the claim.
- C. The claim shall clearly state whether additional monies are part of the claim. If known, the dollar value associated with the claim shall be stated. If unknown, the notice shall indicate the types of expenses, costs or other monetary items that are reasonably expected to be part of the claim amount.
- D. The dollar value associated with the claim, along with all supporting documentation, shall be delivered within 30 days after completion of the work that is subject of the claim. It shall be broken down into Direct and Indirect Costs. The Direct Costs shall be calculated as Changes in the Work. Indirect Costs shall be as stipulated in the Bid Form.
- E. Any claim for additional monies that also involve a request for a Contract time extension shall be submitted together with the amount of time being requested and the supporting data including applicable scheduling references supporting the claim. Scheduling references shall include a month-by-month time impact analysis (TIA) using the approved monthly progress schedules and demonstrating the effect of the delay or change on the Contract completion date for each monthly update period that the change or delay affects.
- F. No reservation of rights will be effective to preserve any claims that are not fully documented and submitted in accordance with requirements of these Contract Documents. Failure of the Contractor to make a specific reservation of rights regarding any such disputed amounts within the Request for Partial Payment or the Request for Final Payment shall be construed as a waiver, abandonment and relinquishment of all claims for additional monies resulting from the claim.

**8.1.06 The currently approved overall project schedule(s) shall be the basis for interpreting any and all time-associated provisions of the Contract including proposed time extensions. Proposed time extensions must include a time impact analysis (TIA), clearly showing the impact on the current schedule, and conclusively proving the validity of the proposed extension.**

In order to request additional time or compensation associated with changes or delays, the Contractor shall submit a written request for time extension with his request for Change Order and a time impact analysis (TIA). The TIA shall demonstrate the time



impact of each change or delay based on the date of the change or start of delay on the Contractor's current construction schedule. Each TIA shall include how the Contractor proposes to incorporate the changes or delays into its construction schedule. Contractor's failure to submit the TIA in accordance with this paragraph shall constitute a waiver and abandonment by Contractor of any claims for time related issues.

- A. The Contractor shall submit the time impact proposal used in the TIA within ten (10) days after a delay commences.
- B. Where the Contractor does not submit a TIA for a specific change or delay within the period of time specified herein, then it is expressly understood that the particular change or delay has no time impact on the Contract completion date and no time extension is required or shall be subsequently granted.
- C. Payment for delays shall be in accordance with the General Conditions.

Proposed contract time extensions shall not be approved unless the time extension will cause the Contract completion date to be extended.

**8.1.07** The Architect/Engineer and the Field Representative shall be allowed full and complete access to all personnel, documents, work sites or other information reasonably necessary to investigate any claim. Within 60 days after a claim has been received, the claim shall either be recognized or if the claim is not recognized within 60 days it shall be deemed denied. If the claim is recognized, the parties shall attempt to negotiate a satisfactory settlement of the claim, which settlement shall be included in a subsequent Work Order or Change Order. If the parties fail to reach an agreement on a recognized claim, the Owner shall pay to the Contractor the amount of money it deems reasonable, less any appropriate retention, to compensate the Contractor for the recognized claim.

**8.1.08** The Contractor shall not cease work on account of any denied claim or any recognized claim upon which an agreement cannot be reached.

**8.1.09** With regard to any and all claims for additional compensation resulting from delays to the Work, it is expressly understood and agreed as follows:

- A. The claimed delay shall not result from a cause specified in the Contract Documents as a Non-excusable Delay.
- B. Notice of the claim shall have been provided in accordance with and within the time specified in this Article.
- C. The Contractor assumes all risk for the following items, none of which shall be the subject of any claim and none of which shall be compensated for except as they may have been included in the compensation for indirect costs.
  - (1) Home office expenses or any direct costs incurred allocated from the headquarters of the Contractor.
  - (2) Loss of anticipated profits on this or any other project.
  - (3) Loss of bonding capacity or capability.
  - (4) Losses due to other projects not bid upon.
  - (5) Loss of business opportunities.
  - (6) Loss of productivity on this or any other project.
  - (7) Loss of interest income on funds not paid.
  - (8) Costs to prepare, negotiate or prosecute claims.
  - (9) Costs spent to achieve compliance with applicable laws and ordinances (excepting only sales taxes paid shall be reimbursable expense subject to the provisions of the Contract Documents).



- D. All claimed items of additional compensation shall be properly documented and supported with copies of invoices, time sheets, rental agreements, crew sheets and the like.
- E. No payment(s) shall be made to the Contractor by the Owner for loss of anticipated profit(s) from any deleted work.

## **ARTICLE 9 - CONFORMITY WITH CONTRACT DOCUMENTS**

### **9.1 CONFORMITY WITH PLANS AND SPECIFICATIONS**

- 9.1.01** All work and all materials furnished shall be in reasonably close conformity with the lines, grades, grading sections, cross sections, dimensions, material requirements, and testing requirements that are specified (including specified tolerances) in the Contract Documents.
- 9.1.02** If the Architect/Engineer finds the materials furnished, work performed, or the finished product not within reasonably close conformity with the Contract Documents but that the portion of the affected work will, in its opinion, result in a finished product having a level of safety, economy, durability, and workmanship acceptable to the Owner, it will advise the Owner of its determination that the affected work be accepted and remain in place. In this event, the Architect/Engineer will document its determination and recommend to the Owner a basis of acceptance which will provide for an adjustment in the Contract Price for the affected portion of the work. The Architect/Engineer's determination and recommended Contract Price adjustments will be based on the requirements of the Technical Specifications, good professional judgment and such tests or retests of the affected work as are, in its opinion, needed. Changes in the Contract Price will be made in a Change Order or Work Order, as applicable.
- 9.1.03** If the Architect/Engineer finds the materials furnished, work performed, or the finished product are not in reasonably close conformity with the Contract Documents and have resulted in an unacceptable finished product, the affected work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with the Architect/Engineer's written orders.
- 9.1.04** For the purpose of this Article, the term "reasonably close conformity" shall not be construed as waiving the Contractor's responsibility to complete the work in accordance with the requirements of the Contract Documents. The term "reasonably close conformity" shall not be construed as waiving the Architect/Engineer's or the Owner's right to insist on strict compliance with the requirements of the Contract Documents during the Contractor's prosecution of the work, when, in the Architect/Engineer's or the Owner's opinion, such compliance is essential to provide an acceptable finished portion of the work.
- 9.1.05** For the purpose of this Article, the term "reasonably close conformity" is also intended to provide the Architect/Engineer with the authority to use good professional judgment in his/her determinations as to acceptance of work that is not in strict conformity but will

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provide a finished product equal to or better than that intended by the requirements of the Contract Documents.

## **9.2**

## **REMOVAL OF DEFECTIVE OR UNAUTHORIZED**

### **WORK**

- 9.2.01** All work which has been rejected by either the Architect/Engineer or the Field Representative shall be satisfactorily repaired or if it cannot be satisfactorily repaired, it shall be removed and replaced all at no additional cost to the Owner. Materials not conforming to the requirements of the Contract Documents shall be removed immediately from the site of the work and replaced with satisfactory material by the Contractor at no additional cost to the Owner.
- 9.2.02** Work done without control lines and grades having been furnished by either the Architect/Engineer or the Field Representative, work done beyond the scope of the Contract, work done without proper inspections, or any extra work done without written authority, will be at the Contractor's risk, and such work shall not be paid for unless written authorization in the form of a Work Order or Change Order is obtained. In the event written authorization is not obtained, such work shall be removed or replaced by the Contractor, at no additional cost to the Owner, upon the directions of the Field Representative.
- 9.2.03** Work that is defective or Work that fails to conform with the Contract Documents will be at the Contractor's risk, and no payment shall be made for such work. As specified in the Technical Specifications or at the option of the Owner, an agreed equitable amount may be deducted from the Contract amount in lieu of replacement or repair of work not fully meeting the requirements of the Contract Documents. Acceptance by the Owner of such deduction shall not modify the requirements of any guarantees called for by the Contract Documents. Written authorization for such work must be obtained in the form of a Work Order or Change Order with the appropriate credit to the Owner. In the event written authorization is not obtained, and upon the directions of the Field Representative, such work shall be removed or replaced by the Contractor at no additional cost to the Owner.
- 9.2.04** If either the Architect/Engineer or the Field Representative so requests, the Contractor shall at any time before final acceptance of the work, remove or uncover such portions of the finished work as may be directed. After examinations, the Contractor shall restore said portions of the work to the standard required by the Contract Documents. If the work thus exposed or examined proves acceptable, the uncovering or removing and the replacing of the covering or making good of parts removed shall be at the Owner's expense; but if the work so exposed or examined proves unacceptable, the uncovering or removing and the replacing of the covering or making good of the defective work shall be at the Contractor's expense.
- 9.2.05** No extension of time will be allowed the Contractor in connection with the correction of work that fails to conform with the Contract Documents.

## **9.3**

## **CORRECTION OF WORK**



- 9.3.01** The Contractor shall promptly correct all Work rejected by either the Architect/Engineer or the Field Representative as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all cost of correcting rejected Work, including the cost of the Architect/Engineer's services, the Field Representative and the Owner's additional services.
- 9.3.02** After being notified in writing by the Field Representative, or the Owner, of work that is not in accordance with the requirements of the Contract Documents, or of any defects in the Work, the Contractor shall promptly commence and prosecute with due diligence all work necessary to fulfill the terms of the Contract, and to complete the Work within a reasonable period of time.
- 9.3.03** In the event of an emergency, constituting an immediate hazard to the health or safety of personnel and/or property, the Owner, without prior notice, has the right but not the obligation to undertake at the Contractor's expense, all work necessary to correct such hazardous condition when it was caused by work of the Contractor not being in accordance with the requirements of the Contract Documents.
- 9.3.04** If, within one year after the date of Substantial Completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct such work within ten days after receipt of a written notice from the Owner to do so. In the event the Contractor fails to comply, the Owner may proceed to have such work done at the Contractor's expense and the Contractor and/or its surety will pay the cost thereof upon demand. The Owner shall be entitled to all costs, including reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to pay the above costs.
- 9.3.05** All such defective or non-conforming work shall be removed from the site if necessary, and the work shall be corrected to comply with the Contract Documents without cost to the Owner.
- 9.3.06** The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.
- 9.3.07** Upon failure on the part of the Contractor to comply forthwith with any order of the Field Representative made under the provisions of this Article, the Owner will have authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs (incurred by the Owner) from any monies due or to become due the Contractor.
- 9.3.08** Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents.

## **ARTICLE 10 - PAYMENTS**



## **10.1 SCOPE OF PAYMENT**

**10.1.01** The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all materials, for performing all work under the Contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof, to the provisions of the Contract Documents.

**10.1.02** When the "Basis of Payment" Article of a Technical Specification requires that the contract price (price bid) include compensation for certain work or material essential to the item, this same work or material will not also be measured for payment under any other contract item which may appear elsewhere in the Contract, Plans, or Specifications.

**10.1.03** When the accepted quantities of work vary from the quantities in the Bid Form, the Contractor shall accept as payment in full, so far as Contract items are concerned, payment at the original contract bid price for the accepted quantities of work actually completed and accepted. No allowance, except as provided for in subsection titled "Deletion or Addition of Work" will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor which results directly from such alterations or indirectly from its unbalanced allocation of overhead and profit among the Contract items, or from any other cause.

**10.1.04** The Contractor's attention is directed to Miami-Dade County Code Section 2-8.1.4, providing for expedited payments to small businesses by County agencies; creating dispute resolution procedures for payment of County obligations; and requiring the Contractor to issue prompt payments, and have the same dispute resolution procedures as the County, for all small business subcontractors. Failure of the Contractor to issue prompt payment to small businesses, or to adhere to its dispute resolution procedures, may be cause for suspension, termination, and debarment, in accordance with the terms of the County contract and debarment procedures of the County.

## **10.2 PARTIAL PAYMENTS TO THE CONTRACTOR**

**10.2.01** Within fifteen (15) days after tentative award of the Contract in accordance with the Instructions to Bidders, the successful low Bidder shall prepare and submit to the Field Representative the following items for approval by the Architect/Engineer and the Owner:

- A. Preliminary Schedule of Values;
- B. Schedule of Estimated Monthly Partial Payments;
- C. Construction Progress Schedules within the time frames specified in Division 1.

**10.2.02** No payments will be made until the preliminary Schedule of Values, Schedule of Estimated Monthly Partial Payments and the Construction Progress Schedules required as specified above are received and approved by the Architect/Engineer and the Owner.



- 10.2.03** Within ten (10) days from the approval of the Overall Construction Progress Schedule, as specified in Division 1, the Contractor shall prepare and submit to the Field Representative the finalized Schedule of Values. No Partial Payments will be made until the Overall Construction Schedule and Schedule of Values are received and approved by Architect and the Owner.
- 10.2.04** The Schedule of Values shall be prepared on the form provided by the Owner and shall relate to the activities and monetary values shown in the approved Overall Construction Progress Schedule. It will include a complete breakdown of all project costs by the Specification Sections and Subsections for each of the major items of the work. It shall be revised when requested by the Field Representative if any of the values of items of work in the Schedule of Values appear to be incorrect or unbalanced. No such revisions shall in any manner affect the Total Contract Amount. Supporting data acceptable to the Field Representative will be required to substantiate the Schedule of Values. The approved Schedule of Values shall be used in the preparation of the Partial Payments and shall be used in determining the equitable value of work to be deleted from a lump sum contract or a lump sum item.
- 10.2.05** The Schedule of Estimated Monthly Partial Payments shall be realistic, and shall conform to the construction schedules. The Schedule of Estimated Monthly Partial Payments may be adjusted, from time to time, to reflect changes, if any, in the Overall Project Schedule.
- 10.2.06** The Contractor may request payments, on a monthly basis, as the work progresses. Payments shall be based on prepared Applications for Payment showing the value of work performed each month including work completed and materials delivered and properly stored on the Site.
- 10.2.07** The Contractor shall prepare each Application for Payment with required attachments and submit same to the Field Representative for approval by the Architect/Engineer. All payments to the Contractor shall be payable at the Miami-Dade County Finance Department, Stephen P. Clark Center, 111 N.W. 1st Street, 26th Floor, Miami, Florida 33128-2241.
- 10.2.08** Each application for payment shall include the following:
- (a) The amount previously paid to the Contractor on account of the Work;
  - (b) The total amount requested in the application for payment;
  - (c) The balance remaining to meet the Contract Sum in accordance with the latest approved Schedule of Values;
  - (d) The amount of Owner-approved Change Orders listed individually;
  - (e) A breakdown of charges to the Allowance Account;
  - (f) Supporting documentation for the breakdown described above, as directed by the Owner, including but not limited to an accounting of materials purchased and stored off the project site;
  - (g) Accounting for Sales Tax Savings for Owner purchases;
  - (h) The Contractor's partial waiver and release;
  - (i) A list of each Subcontractor and Supplier, at every tier, who performed Work or provided materials to the Project during the period covered by the application for payment;
  - (j) Partial waivers and releases from each Subcontractor and Supplier who performed work on the project during the period covered by the application for payment or consent of surety;



- (k) An updated Project Schedule per Section 01311 of the Specifications;
- (l) An updated CSBE Plan;
- (m) A monthly CSBE Employment Utilization report included in Document 00823-PP;
- (n) Certified payroll reports utilizing applicable wage rates for the Contractor and for each Subcontractor and Sub subcontractor, at every tier, who performed work on the Project during the period covered by the application for payment;
- (o) Site progress aerial photographs; and
- (p) Such other information, evidence and substantiation as the Contracting Department may require with respect to the nature and extent of all obligations incurred for or in connection with the work.

**10.2.09** Payment for work represented by monthly Applications for Payment will be made approximately thirty (30) days after approval by the Architect/Engineer of the Application for Payment. In case of a dispute in one or more of the amounts in an Application for Payment, only the amounts not being disputed will be paid.

**10.2.10** The quantity of work performed and its value will be determined based on field measurement made by the Field Representative and from the approved Schedule of Values, and any changes in the work as may be authorized by the Owner.

**10.2.11** The value of materials on hand but not incorporated in the work will be determined by the Field Representative, based on actual invoice costs to the Contractor, and such value will be included in the monthly Applications for Payment only if the materials have been properly stored on the Site, provided that such materials meet the requirements of the Contract, Plans, and Specifications and are delivered to acceptable sites on the project site or in bonded warehouses that are acceptable to the Owner. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- A. The material has been stored and stockpiled in a manner acceptable to the Field Representative at or on the approved site.
- B. The Contractor has furnished the Field Representative with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- C. The Contractor has furnished the Field Representative with satisfactory evidence that the material and transportation costs have been paid.
- D. The Contractor has furnished the Owner legal title (free of liens or encumbrances of any kind) to the material so stored and stockpiled.
- E. The Contractor has furnished the Owner evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at anytime prior to use in the work. It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Contractor of its responsibility for furnishing and placing such materials in accordance with the requirements of the Contract, Plans, and Specifications and does not waive Owner's claim to reject defective materials when it is delivered to the job site.
- F. In no case will the amount of partial payments for materials on hand exceed the contract price for such materials or the contract price for the contract item in which the material is intended to be used, or the value for such materials established in the approved Schedule of Value.
- G. No partial payment will be made for stored or stockpiled living or perishable plant materials.
- H. The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this Article.

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- 10.2.12** Except as provided hereafter, the Owner shall retain ten percent (10%) of the value of such work and materials, including approved Change Orders, until Substantial Completion. With the next pay application after Substantial Completion the Owner shall release all retainage except for an amount equal to twice the estimated cost to the Owner of completing the punch list items, as provided by the Architect/Engineer. At Final Acceptance all remaining retainage will be released with the Final Payment.
- 10.2.13** The Contractor agrees that no substitution of securities for retainage amounts will be permitted under the Contract.
- 10.2.14** The Owner shall pay the Contractor the balance not retained as aforesaid, after deducting therefrom all previous payments. The estimates will be approximate only and all partial or monthly estimates and payments shall be subject to correction in the Application for Payment rendered following discovery of an error in any previous Application for Payment.
- 10.2.15** In the event the Contractor's monthly Pay Estimates vary substantially from the approved Schedule of Estimated Partial Monthly Payments, the Contractor shall submit a revised Schedule of Estimated Monthly Partial Payments to the Architect/Engineer for approval.
- 10.2.16** In the event the Surety on the Performance and Payment Bonds given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in the State of Florida suspended or revoked as provided by law, the Owner shall withhold payment of any Application(s) for Payment filed and certified by the Architect/Engineer until the Contractor shall give a good and sufficient Bond(s) as required by the Contract Documents, in lieu of the Bond(s) so executed by such Surety.
- 10.2.17** If any work or material is discovered, which in the opinion of the Architect/Engineer, the Consultants, or the Field Representative is defective, or should a reasonable doubt arise on the part of either the Architect/Engineer or the Field Representative as to the integrity of any part of the work completed previous to the final acceptance and payment, there will be deducted from the first Application for Payment rendered after the discovery of such work, an amount equal in value to the defective or questioned work, and this work will not be included in any subsequent Applications for Payment until the defects have been remedied or the causes for doubt removed.
- 10.2.18** If the Contractor fails to complete the Work, prior to or on the Contract completion date, no further Payments will be made after the date of Contract completion date until the Contractor delivers to the Owner a written consent of the Contractor's Surety covering all payments to be made thereafter, without affecting the validity of the Performance and Payment Bonds.

### **10.3 SUBCONTRACTOR'S AFFIDAVITS FOR PAYMENTS**

- 10.3.01** Every request by the Contractor for payment of work performed, except the first draw, shall be accompanied by affidavits as required by Section 10-35 of the Code of Miami-Dade County, such affidavits to be in substantially the form as bound herein.



## **10.4 FINAL PAYMENT**

**10.4.01** After Final Acceptance of the Work, a request for Final Payment prepared by the Contractor shall be submitted to the Field Representative for approval by the Architect/Engineer and the Owner and subsequent payment to the Contractor.

**10.4.02** Except as may be noted on the Contractor's Affidavit and Release of All Claims, the Contractor hereby agrees to accept Final Payment as full payment for performing and completing the Work, for furnishing all labor, materials, services, equipment and everything necessary for or incidental to, and for all incidental expenses in connection with, for all loss by damage to or destruction of the Work due to any cause whatsoever, for any additional expenses because of delays or unforeseen difficulties encountered, for settlement of claims, agreed upon deductions in lieu of removal and replacement of defective work, and for replacement of defective work and materials. Except as may be noted on the Contractor's Affidavit and Release of All Claims, acceptance of the Final Payment shall constitute an accord and satisfaction between the Owner and the Contractor. In case of unresolved Subcontractor claims against the Contractor, the Owner will withhold all disputed amounts unless the Contractor provides a fully executed Consent of Surety in a form acceptable to the Owner.

## **ARTICLE 11 - CONTRACT COMPLETION**

### **11.1 DETERMINATION AND EXTENSION OF CONTRACT TIME**

**11.1.01** All work under this Contract shall be completed within the number of calendar days stipulated in the Bid Form, counting from the effective date of the Notice-to-Proceed and including all Saturdays, Sundays, holidays and non-work days. All calendar days elapsing between the effective dates of the Field Representative's orders to suspend and resume all work, due to causes not the fault of the Contractor, its Subcontractors or Suppliers, as specified in these General Conditions, shall be considered as Excusable Delays; request(s) for time extension shall be in accordance with the requirements of these General Conditions.

### **11.2 BENEFICIAL OCCUPANCY AND SUBSTANTIAL COMPLETION**

**11.2.01** Beneficial Occupancy shall occur when the Owner in its sole discretion determines that a portion of the Work may be occupied. The Owner may take Beneficial Occupancy in accordance with the provisions of the Contract Documents. If known that the Owner intends to take Beneficial Occupancy of any portion of the Work, such will be stated in the Contract Documents. If not known prior to the time of receipt of Bids, the Owner will give written notice to the Contractor through the Field Representative, within a reasonable time of taking any such Beneficial Occupancy.

**11.2.02** Substantial Completion shall occur when the Architect/Engineer issues a certificate of Substantial Completion. The Contractor is entitled to Substantial Completion when only minor Punch List items are pending, and when the Work can fully be used for the use for which it was intended.



- 11.2.03** Beneficial Occupancy or issuance of a Certificate of Substantial Completion shall not constitute Final Acceptance of the Work, nor shall it relieve the Contractor of any responsibility for the correction of work or for the performance of work not complete at the time of Beneficial Occupancy or Substantial Completion.
- 11.2.04** Prior to Beneficial Occupancy or Substantial Completion, the Contractor shall obtain a Certificate of Occupancy from the Building and Zoning Department.
- 11.2.05** Prior to Beneficial Occupancy or Substantial Completion, the Contractor shall deliver to the Field Representative complete As-Builts, all approved Shop Drawings, maintenance manuals, pamphlets, charts, parts lists and specified spare parts, operating instructions and other necessary documents required for all installed materials, equipment, or machinery, all applicable warranties and guarantees, and the appropriate Certificate of Occupancy.
- 11.2.06** As provided in Division 1, prior to the anticipated date of Beneficial Occupancy or Substantial Completion, the Contractor shall instruct Owner personnel as necessary for the proper operation and maintenance of all equipment and machinery that will serve the work.
- 11.2.07** As provided in Division 1, prior to the date of Beneficial Occupancy or Substantial Completion, the Architect/Engineer, the Consultants, and the Field Representative will inspect the Work and begin the preparation of a Punch List covering those items of incomplete or defective work which the Contractor shall complete and correct prior to Final Acceptance.
- 11.2.08** The Contractor shall not be responsible for normal wear resulting from the Owner's use of the work after Beneficial Occupancy or Substantial Completion. However, any damage to the work not attributable to normal wear resulting from the Owner's use shall be repaired by the Contractor at no additional cost to the Owner.

### **11.3 CONTRACTOR'S RESPONSIBILITY FOR WORK**

- 11.3.01** Until the final acceptance of the Work, excepting only those portions of the work declared Substantially Completed, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part due to the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before Final Acceptance and shall bear the expense thereof.
- 11.3.02** If the work is suspended for any cause whatever, the Contractor shall be responsible for the work and shall take such precautions necessary to prevent damage to the work. The Contractor shall protect the work from erosion, provide for normal drainage and shall erect necessary temporary structures, signs, or other facilities as necessary to protect the work.

### **11.4 GUARANTEES AND WARRANTIES**



- 11.4.01** The guaranty period for the entire work covered by the Performance and Payment Bonds shall not begin until Substantial Completion of all work under the Contract and will be for a period of one year unless otherwise stipulated in the Contract Documents.
- 11.4.02** The guaranty period for equipment covered by Contractor's and Subcontractors' guarantees shall start at the time of Beneficial Occupancy for any portion of the Work which is occupied by the Owner prior to Substantial Completion, or at Substantial Completion, whichever occurs first, and will be for a period of one year unless otherwise stipulated in the Contract Documents.
- 11.4.03** The Contractor hereby warrants and guarantees that all work shall be in accordance with the Contract Documents. The Contractor will submit a written guarantee in the form found in the Contract Documents prior to Substantial Completion. The Contractor further agrees that it will correct all defects discovered within one year (or longer if a longer period is stipulated in the Contract Documents,) of the date of Substantial Completion and that it will commence work on such repairs within (10) days after being notified by the Owner of the need for this work.
- 11.4.04** If the Contractor fails to act within this time period, the Owner reserves the right to have the work performed by others at the expense of the Contractor, and the Contractor agrees to pay the Owner the cost thereof upon demand. The Owner shall also be entitled to reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to pay the above costs.
- 11.4.05** The Contractor will correct all latent defects discovered within fifteen (15) years after Substantial Completion provided that the Owner shall notify the Contractor of each latent defect within the time specified by law. The Contractor, without prejudice to the terms of the Contract, shall be liable to the Owner for all damages sustained by the Owner resulting from latent defects, fraud, or such gross mistakes as may amount to fraud, discovered after the stated guarantee and warranty periods have expired. If the Contractor fails to act within 10 days, the Owner reserves the right to have the work performed by others at the expense of the Contractor, and the Contractor agrees to pay the Owner the cost thereof upon demand. The Owner shall also be entitled to reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to pay the above costs.
- 11.4.06 Required Guarantees:**
- A. **Subcontractor's Guarantees**  
The Contractor shall furnish a written guaranty from each Subcontractor in the form found in the Contract Documents.
  - B. **Manufacturer's Guarantees**  
The Contractor shall furnish an original guaranty or warranty from each of the manufacturers of equipment or materials supplied and installed under this Contract. Each guaranty or warranty shall be in accordance with the respective manufacturer's association Standard Guaranty and shall be in favor of the Contractor and the Owner.
  - C. **Special Guaranty and Warranty Requirements**  
The Contractor shall also furnish any special guaranty or warranty called for in the Contract Documents.



**11.4.07** All guarantees and warranties shall be delivered to the Field Representative prior to Beneficial Occupancy or Substantial Completion, whichever is applicable.

**11.4.08** Notwithstanding the foregoing provisions, in the event of an emergency constituting an immediate hazard to the health or safety of employees, property, lessees, or the general public, the Owner may undertake, at the Contractor's expense without prior notice, all work necessary to correct such hazardous condition when it was caused by work of the Contractor not being in accordance with the requirements of this Contract.

## **11.5 FINAL ACCEPTANCE**

**11.5.01** Upon due notice from the Contractor of presumptive completion of the Work, the Architect/Engineer, the Consultants, the Field Representative, and the Owner will make an inspection. If all construction provided for and contemplated by the Contract is found to be completed in accordance with the Contract Documents, such inspection shall constitute the final inspection. The Field Representative will notify the Contractor in writing of Final Acceptance as of the date of final inspection.

**11.5.02** If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the Field Representative will give the Contractor the instructions for correction of same (punch list) and the Contractor shall immediately comply with and execute the work listed in the punch list. Upon correction of the work, another inspection will be made which shall constitute the final inspection, provided that work has been satisfactorily completed. In such event, the Field Representative will notify the Contractor in writing of Final Acceptance as of the date of this final inspection.

**11.5.03** Upon notification of Final Acceptance, the Contractor shall furnish to the Field Representative the final Contractor's Affidavit and Release of All Claims.

**11.5.04** Final Acceptance of the Work does not preclude or stop the Field Representative from correcting any measurement, estimate, or certificate made before or after completion of the Work, nor shall the Owner be precluded or stopped from recovering from the Contractor or its Surety, or both, such overpayment as may be sustained, or by failure on the part of the Contractor to fulfill its obligations under the Contract. A waiver on the part of the Owner of any breach of any part of the Contract shall not be held to be a waiver of any other or subsequent breach.

**11.5.05** The Contractor, without prejudice to the terms of the Contract, shall be liable to the Owner for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under any warranty or guaranty.

## **11.6 CONTRACTOR'S AFFIDAVIT AND RELEASE OF ALL CLAIMS**

**11.6.01** Upon the completion of the Work and before the final payment is made, the Contractor shall execute a Contractor's Affidavit and Release of All Claims. This is to be accompanied by a consent of the Surety, in favor of the Owner, on the Form included in the Contract Documents. An original Contractor's Affidavit and Release of All Claims shall be submitted to the Field Representative with the Contractor's Request for Final Payment.



- 11.6.02** The rights of all persons supplying labor, materials and supplies, used directly or indirectly in the prosecution of the Work covered by this Contract are governed by the provisions of Section 255.05, Florida Statutes. Nothing in the Contract Documents shall be construed to confer any benefits or rights upon or to create any relationships whatsoever with any subcontractor, supplier, laborer or any other party except as same may be granted, conferred or created by Section 255.05 of the Florida Statutes.

## **ARTICLE 12 - INDEMNIFICATION AND HOLD HARMLESS**

### **12.1 INDEMNIFICATION AND HOLD HARMLESS**

- 12.1.01** In consideration of the entry of this Agreement, and to the extent permitted by Chapter 725, Florida Statutes, as may be amended, the Contractor agrees to indemnify, protect, defend, and hold harmless the County, their elected officials, officers, employees, consultants, and agents from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the Work.
- 12.1.02** The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor and/or any Subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts.
- 12.1.03** In the event that any claims are brought or actions are filed against the County with respect to the indemnity contained herein, the Contractor agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The Contractor agrees that the County may select the attorneys to appear and defend such claims or actions on behalf of the County. The Contractor further agrees to pay at the Contractor's expense the attorneys' fees and costs incurred by those attorneys selected by the County to appear and defend such claims or actions on behalf of the County. The County, at its sole option, shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against the County.
- 12.1.04** To the extent this indemnification clause or any other indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Contract Documents shall hereby be interpreted as the parties' intention for the indemnification clauses and Contract Documents to comply with Chapter 725, Florida Statutes, as may be amended.
- 12.1.05** This Section shall survive expiration or termination of this Agreement.

### **12.2 PERFORMANCE AND PAYMENT BOND**



**12.2.01** A Performance and Payment Bond satisfactory to the Owner, on the form attached hereto, in an amount not less than the Total Contract Amount shall be required of the Contractor.

A. Bond shall be written through surety insurers authorized to do business in the State of Florida as Surety, with the following qualifications as to management and financial strength according to the latest (1986 or later) edition of

Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond (Total Contract) Amount	Best's Rating
\$500,001 to \$1,500,000	B V
1,500,001 to 2,500,000	A VI
2,500,001 to 5,000,000	A VII
5,000,000 to 10,000,000	A VIII
Over \$10,000,000	A IX

B. For contracts in excess of \$500,000 the provision of Subsection 12.2.01.B will be adhered to, plus the surety insurer must have been listed on the U.S. Treasury list for at least three consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.

C. Surety bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.

D. The attorney-in-fact or other officer who signs a Performance Bond and Payment Bond for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

**12.2.02** The cost of the Bond shall be included in the Total Amount Bid. No separate payment for the cost of the Performance and Payment Bond shall be made by the Owner.

**12.2.03** The required Bond shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425 of the Florida Statutes.

**12.2.04** The Bond shall be delivered to the Owner with the executed Contract.

**12.2.05** In the event the Surety on the Performance and Payment Bond given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in its State of domicile or the State of Florida suspended or revoked as provided by law, the Owner shall withhold all payments under the provisions of these Contract Documents until the Contractor has given a good and sufficient Bond in lieu of Bond executed by such Surety.

**12.2.06** Cancellation of any bond, or non-payment by the Contractor of any premium for any bond required by this Contract shall constitute a breach of this Contract. In addition to any other legal remedies, the Owner at its sole option may terminate this Contract or pay such premiums, and deduct the costs thereof from any amounts that are or may be due to the Contractor.



## 12.3 INSURANCE

**12.3.01** The Contractor shall maintain the following insurance throughout the performance of this Contract until the work has been completed by the Contractor and accepted by the Owner.

The Contractor shall furnish:

1. Certificate(s) of Insurance which indicate the coverage required in paragraphs a, b, and c.
  2. Original Policies which indicate the coverage required in paragraphs d and e.
- Statutes.
- a) Worker's Compensation Insurance as required by chapter 440, Florida
  - b) Public Liability Insurance on a Comprehensive basis in an amount not less than \$1,000,000 per occurrence for bodily injury and property damage combined.
  - c) Automobile Liability Insurance covering all owned, non-owned and hired vehicles in an amount not less than \$1,000,000 per occurrence for bodily injury and property damage combined.
  - d) Owners Protective Liability Insurance-Issued in the name of Miami-Dade County as sole insured in an amount not less than \$1,000,000 per occurrence for bodily injury and property damage combined.
  - e) Completed Value Builder's Risk Insurance on an "All Risk" basis in an amount not less than one hundred (100%) percent of the insurable value of the building(s) or structure(s). The policy shall be in the name of Miami-Dade County and the Contractor.

**12.3.02** Compliance with the foregoing requirements as to the carrying of insurance shall not relieve the Contractor from liability under any other portion of this Contract.

**12.3.03** Cancellation of any insurance or bonds, or non-payment by the Contractor of any premium for any insurance policies or bonds required by this Contract shall constitute a breach of this Contract. In addition to any other legal remedies, the Owner at its sole option may terminate this Contract or pay such premiums, and deduct the costs thereof from any amounts that are or may be due to the Contractor.

**12.3.04** Immediate notification must be given the Owner and its agent in case of accident or occurrence which might give rise to a claim under any policy provided by the Owner, or any policy on which the Owner is a joint insured.

**12.3.05** The Contractor and its Subcontractors shall cooperate to the fullest extent with the Owner in all matters relating to the insurance provided and shall comply with all requirements of any insurance policy procured by the Owner. They shall also at their own expense furnish the County or its duly authorized representative with copies of all correspondence, papers, records and other items necessary or convenient for dealing with or defending against any claims and for administering the aforementioned insurance including furnishing the time of any of their employees, officers, or agents whose presence or testimony is necessary or convenient in any negotiations or proceedings involving such insurance.



- 12.3.06** The provisions of these General Conditions are not intended to create any rights for the Contractor and/or Subcontractors other than rights which may be available to them under the policies themselves, whatever such rights might be. Moreover, the Owner makes no representation or guaranty either by the provisions of this General Condition or otherwise as to the effect of or the coverage under said policies, and no employee or agent of the Owner is authorized to make any such representation or guaranty, or to offer any interpretation of or information on said policies. Upon request of the Contractor and/or Subcontractors, coverage forms will be made available for examination.

## **ARTICLE 13 - CANCELLATION OR TERMINATION OF CONTRACT**

### **13.1 CANCELLATION BY THE OWNER**

- 13.1.01** The Owner may at its option and discretion cancel the Contract at any time without any default on the part of the Contractor by giving a written Notice of Cancellation to the Contractor and its Surety at least ten (10) days prior to the effective date of such cancellation.

- 13.1.02** In the event of cancellation by the Owner, the Owner shall pay the Contractor for all labor performed, all materials and equipment furnished by the Contractor and its Subcontractors, materialmen and suppliers and manufacturers of equipment less all partial payments made on account prior to the date of cancellation as determined by the Field Representative and approved by the Architect/Engineer. The Contractor will be paid for:

- A. The final value of all work completed under the Contract, based upon the approved Schedule of Values and/or Unit Prices,
- B. The final value of all materials and equipment delivered to but not incorporated into the work and properly stored on the site,
- C. The final value of all bonafide irrevocable orders for materials and equipment not delivered to the construction site as of the date of cancellation. Such materials and equipment must be delivered to the Owner to a site or location designated by the Department prior to release of payment for such materials and equipment.

No claims for loss of anticipated profits or for any other reason in connection with the cancellation of the Contract shall be considered.

- 13.1.03** In the event of cancellation under this Article, the Contractor shall not be entitled to any anticipated profits for any work not performed due to such cancellation.

- 13.1.04** In the event of cancellation under this Article, the Owner does not waive or void any credits otherwise due Owner at the time of cancellation, including Liquidated Damages, and back charges for defective or deficient work.

- 13.1.05** Upon cancellation as above, the Field Representative shall prepare a certificate for Final Payment to the Contractor.



## **13.2 TERMINATION BY DEFAULT OF CONTRACTOR**

**13.2.01** The Contract may be terminated by the Owner for failure of the Contractor to comply with any requirements of the Contract Documents including but not limited to:

- A. Failure to begin the work under the Contract within the time specified in the "Notice to Proceed," or
- B. Failure to perform the work or failure to provide sufficient workers, equipment or materials to assure completion of work in accordance with the terms of the Contract, and the approved Progress Schedule, or
- C. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, after written directions from the Field Representative, or
- D. Discontinues the prosecution of the work, or
- E. Failure to resume work which has been discontinued within a reasonable time after notice to do so, or
- F. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or failure to maintain a qualifier, or
- G. Allows any final judgment to stand against him unsatisfied for a period of 10 days, or
- H. Makes an assignment for the benefit of creditors, or
- I. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

**13.2.02** Before the Contract is terminated, the Contractor and its Surety will be notified in writing by the Architect/Engineer of the conditions which make termination of the Contract imminent. The Contract will be terminated by the Owner ten (10) days after said notice has been given to the Contractor and his Surety. Unless a satisfactory effort acceptable to the Owner has been made by the Contractor or his Surety to correct the conditions, the Owner may declare the Contract breached and send a written Notice of Termination to the Contractor and his Surety.

**13.2.03** The Owner reserves the right, in lieu of termination as set forth in this Article, to withhold any payments of money which may be due or become due to the Contractor until the said default(s) have been remedied.

**13.2.04** In the event the Owner exercises its right to terminate the Contract for default of the Contractor as set forth herein, the Surety shall complete the Contract in accordance with its terms and conditions. If the Surety takes over, the time or delay between Notice of Default and start of work by the Surety is a Non-Excusable Delay. If the Surety fails to act promptly, but no longer than 30 calendar days, the Owner may exercise any of its other options. No claims for loss of anticipated profits or for any other reason in connection with the termination of the Contract shall be considered.



### **13.3 TERMINATION FOR NATIONAL EMERGENCIES**

**13.3.01** The Owner shall terminate the Contract or portion thereof by written notice when the Contractor is prevented from proceeding with the construction contract as a direct result of an Executive Order of the President of the United States with respect to the prosecution of war or in the interest of national defense.

**13.3.02** When the Contract, or any portion thereof, is terminated before completion of all items of work in the Contract, payment will be made for the actual number of units or items of work completed at the Contract price or as mutually agreed for items of work partially completed or not started. No claims or loss of anticipated profits or for any other reason in connection with the termination of the Contract shall be considered.

### **13.4 IMPLEMENTATION OF CANCELLATION OR TERMINATION**

**13.4.01** If the Owner cancels or terminates the Contract, the Contractor shall stop all work on the date specified in the Notice of Cancellation or Termination and shall:

- A. Cancel all orders and subcontracts which may be terminated without costs;
- B. Cancel and settle other orders and subcontracts where the cost of settlement will be less than costs which would be incurred were such orders and subcontracts to be completed, subject to prior approval of the Field Representative;
- C. Transfer to the Owner, in accordance with directions of the Field Representative, all materials, supplies, work in progress, facilities, equipment, machinery or tools acquired by the Contractor in connection with the performance of the work and for which the Contractor has been or is to be paid;
- D. Deliver to the Field Representative As-Built Documents, complete as of the date of cancellation or termination, Plans, Shop Drawings, Sketches, Permits, Certificates, Warranties, Guarantees, Specifications, three complete sets of maintenance manuals, pamphlets, charts, parts lists, spare parts (if any), operating instructions required for all installed or finished equipment or machinery, and all other data accumulated by the Contractor for use in the performance of the work;
- E. Perform all work as may be necessary to preserve the work then in progress and to protect materials, plant and equipment on the site or in transit thereto;
- F. Neither be relieved of his responsibilities for the completed work nor his Surety be relieved of its obligation for and concerning any just claim arising out of the work performed.